

The complaint

Miss R believes Mercedes-Benz Financial Services UK Ltd (MBFS) have acted irresponsibly by agreeing a conditional sale agreement she couldn't afford to repay.

Miss R has also raised concerns about the role commission played in the sale of the agreement. This complaint is being addressed under a separate complaint reference and is not the subject of this decision.

What happened

The background to this complaint is familiar to all parties, so I don't intend to repeat everything in detail here. Instead, I'll provide a summary.

In September 2017 Miss R acquired a vehicle financed by a hire-purchase agreement from MBFS. Miss R paid a deposit of £2,000 and was required to make 48 monthly repayments of £392.99, with an optional purchase payment of £11,300. The total amount repayable under the agreement, including the optional purchase payment, was £32,173.52.

Miss R initially raised concerns about the decision to lend, as well as the mis-sale of the agreement, with MBFS in November 2022. MBFS issued its final response to this complaint in April 2023 in which it did not agree that it had acted unfairly.

Unhappy with MBFS' response to her complaint, Miss R contacted our service in May 2023. In May 2024, Miss R contacted our service to request that her concerns regarding the decision to lend are dealt with separately to her complaint about commission. As a result, our service contacted MBFS to advise accordingly. It appears there was some confusion about whether Miss R's concerns about the decision to lend had been raised with MBFS before or whether this was a new complaint. MBFS has since accepted that Miss R did raise concerns about its decision to lend in November 2022 and she also referred the matter to our service shortly after receiving the final response in April 2023. Notwithstanding this MBFS issued an updated final response, addressing Miss R's concerns about the decision to lend, in August 2024.

Unhappy with this response, Miss R advised our service that she wished to proceed with the complaint. One of our investigators reviewed Miss R's complaint and issued their findings in February 2025. In doing so, they said MBFS had treated Miss R unfairly, and they recommended that the complaint be upheld.

MBFS didn't agree with the investigator's findings. As an agreement couldn't be reached, the complaint was passed to me to decide.

On 16 May 2025, I issued a provisional decision in which I upheld the complaint. Here is what I had to say:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The Financial Ombudsman Service has set out its general approach to complaints about irresponsible and unaffordable lending on its website. And, having taken this into account along with everything else I need to consider, I uphold this complaint. I'll explain why.

The lending decision

MBFS needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Miss R could repay the loan repayments when they fell due and without the need to borrow further.

These checks weren't prescriptive, but could take into account a number of different things such as how much was being lent, the repayment amounts and the consumer's income and expenditure.

So, in keeping with the information on the Financial Ombudsman Service's website, I think there are a number of overarching questions I need to consider when deciding a fair and reasonable outcome given the circumstances of this complaint:

- 1. Did MBFS carry out reasonable and proportionate checks to satisfy itself that Miss R was likely to have been able to repay the borrowing in a sustainable way?*
 - i. If MBFS carried out such checks, did it lend to Miss R responsibly using the information it had?*
 - Or*
 - ii. If MBFS didn't carry out such checks, would appropriate checks have demonstrated that Miss R was unlikely to have been able to repay the borrowing in a sustainable way?*
- 2. If relevant, did Miss R lose out as a result of MBFS's decision to lend to her?*
- 3. Did MBFS act unfairly or unreasonably in some other way?*

Did MBFS carry out reasonable and proportionate checks?

There are many factors that could be relevant when determining how detailed proportionate checks should have been. And while much will depend on the circumstances in question, the more obvious factors include – though aren't necessarily limited to:

- The type of credit Miss R was applying for along with the size, length and cost of the borrowing; and*
- Miss R's financial circumstances – which included her financial history and outlook along with her situation as it was, including signs of vulnerability and/or financial difficulty.*

And generally speaking, I think reasonable and proportionate checks ought to have been more thorough:

- The lower an applicant's income because it could be more difficult to make the repayments as a result; and*
- The higher the amount repayable because it could be more difficult to meet a higher repayment, especially from a lower level of income; and*

- The longer the loan term, because the total cost of the credit was likely to have been greater given the longer time over which repayments have to be made.

As a result, the circumstances in which it was reasonable to conclude that a less detailed affordability assessment was proportionate strike me as being more likely to be limited to applicants whose financial situation was stable and whose borrowing was relatively insignificant and short-lived – especially in the early stages of a lending relationship.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Miss R's complaint.

Prior to agreeing to lend, MBFS carried out a credit check and it was happy with what it found. MBFS noted, amongst other things, that Miss R had a number of active accounts which had been well maintained over an extended period of time. MBFS also noted there were no outstanding arrears, active County Court Judgements or defaults and that Miss R was utilising approximately 50% of her total available credit, all of which pointed to Miss R being a suitable candidate for credit.

However, the credit check also highlighted MBFS to the fact Miss R was committing a significant sum each month towards her existing credit commitments. The credit check showed Miss R was committed to paying around £3,000 a month towards her secured and unsecured credit commitments, excluding the lending in question. What's more, the credit check also revealed that Miss R had entered into two new loan agreements – both with sizeable balances and monthly repayments – in the four months prior to the lending in question.

I recognise that, during the underwriting process, Miss R advised MBFS that she intended to settle her existing loans held with Sainsbury's, Barclays and Hitachi through further secured borrowing. But I don't think this, in and of itself, meant that MBFS could be reasonably satisfied that Miss R could sustainably repay the borrowing in question throughout the life of the agreement without a proper understanding of her overall financial situation.

It does not look like MBFS sought to obtain any details about Miss R's income or expenditure (aside from her existing credit commitments). Or, if it did, I've not seen any verification of this took place.

I note the limited contemporaneous notes available appear to suggest the selling dealership did obtain bank statements from Miss R. And it seems there was a phone call between the selling dealership and Miss R in relation to these statements. Our investigator asked MBFS for more information about this however, due to the passage of time, this information is unfortunately no longer available. But based on what we do have it appears the purpose of obtaining the bank statements – and the subsequent phone call - was to confirm Miss R's bank details were correct and to confirm rental payments. I'm not entirely clear whether these bank statements were shared with MBFS, although I assume they were not. But, in any event, I can't see that these bank statements were used for any other purposes, such as an income and expenditure assessment.

I've thought carefully about all of this, as well as the size of the lending in question and the length of time Miss R was expected to sustainably maintain monthly repayments of £392.99. Having done so, I don't think it was possible for MBFS to make a fair assessment of Miss R's ability to afford the repayments without undue difficulty without any understanding of what Miss R was earning.

With that being the case, I'm not persuaded the level of checks MBFS carried out were reasonable and proportionate in the circumstances.

Would reasonable and proportionate checks have demonstrated that Miss R was likely to have been able to repay the borrowing in a sustainable way?

It isn't possible to determine with certainty what reasonable and proportionate checks would have shown MBFS in practice as I don't know what checks it would have decided to carry out if it had its time again.

As a result, what I'm considering here is the likelihood of reasonable and proportionate checks showing MBFS that Miss R would have been able to sustainably repay the borrowing in question. And for that reason, it is necessary to now consider information that MBFS hadn't considered in September 2017.

MBFS could have obtained a deeper understanding of Miss R's financial circumstances by asking for her bank statements, copies of bills and/or payslips for example.

Miss R has provided bank statements for her two main accounts covering the three months before she applied for the lending in question (i.e. June 2017 – August 2017). I accept that something that we can now see from the information Miss R has provided wouldn't necessarily have been disclosed by whatever reasonable and proportionate checks MBFS might have decided to carry out. But, in the absence of anything else from MBFS, I don't currently think it's unreasonable to rely on Miss R's bank statements when determining what her financial circumstances were likely to have been like before she applied for this loan.

Having looked at the bank statements for June, July and August 2017, I can see that Miss R received her salary, rental income, child tax credit and child benefit in terms of regular income. On average, this income equated to £3,737 per month¹.

So, excluding the lending in question, it looks like Miss R was already committed to spending around 80% of her regularly monthly income on her existing credit commitments, which I think is too high. I think this ought to have alerted MBFS to the fact that further borrowing would likely be unsustainable for her.

As I've noted, Miss R told MBFS that she intended to settle loans held with Sainsbury's, Barclays and Hitachi through further secured borrowing. I've thought about this and, whilst I appreciate MBFS has said that Miss R's credit file showed she had never missed a payment and that the account was in good order, it seems to be this was because she was using credit to repay credit and not because it was genuinely affordable. The fact Miss R took out two unsecured loans in the months immediately prior to the lending in question adds further weight to this notion.

What's more, there was no guarantee that Miss R taking out additional secured borrowing to repay some of her existing unsecured credit commitments would have the effect of reducing her overall monthly financial burden, or if it would, by how much. I accept that, in some situations, a lender is entitled to rely on the testimony of a prospective borrower. But, in this case, Miss R was already committing such a significant amount of her income to existing credit so whether or not MBFS could be reasonably satisfied that some of those lines of credit would be settled – and understanding what impact that would have on her overall indebtedness as well as her monthly credit commitments - strikes me as important when determining whether Miss R would be able to sustainably repay in the borrowing in question.

¹ I note there were a number of other transfers in to and out from another account. Our investigator asked Miss R about this – she explained that this was her sons savings accounts which she transferred money out of to cover bills and would then try to replace the money at a later date. I have not included these transfers in my decision-making.

However, for the sake of argument, let's assume Miss R would have repaid her loans held with Sainsbury's, Barclays and Hitachi². Owing to the passage of time it is not entirely clear, but the available evidence suggests the additional secured borrowing added a further £150 to Miss R's monthly costs. Adding this and the lending in question together equals £542.99. The combined monthly repayments for the Sainsbury's, Barclays and Hitachi loans was £686.99. So, the amount Miss R's would be spending on her monthly credit commitments would have reduced by about £140, notwithstanding the fact her overall indebtedness would have remained the same.

As a result, Miss R would have been spending around £2,860 – or about 77% of her average monthly income – on her existing credit commitments. I think this in and of itself would have given MBFS cause for concern. But, in addition to this, the bank statements reveal average payments by Direct Debit towards Miss R's other bills – including, amongst other things, Council Tax, water, energy and car insurance – totalling about £600. Adding these figures together equals £3,460.

Deducting this from Miss R's average monthly income (£3,737) means Miss R was left with about £277 per month to cover her other essential living costs, such as food and petrol. It is not clear from the bank statements how much Miss R was paying towards these costs each month. But I don't think I need to explore this further to reach a fair and reasonable answer. I say this because I don't think £277 was enough to cover all other non-discretionary expenditure each month, particularly bearing in mind Miss R had a dependent. Or, if it was just about enough, I don't think it would have left Miss R with any buffer to cover any unexpected expenses.

As a result, it seems to me that reasonable and proportionate checks are likely to have demonstrated that Miss R would not have been able to sustainably make the repayments for this loan without a real risk of undue difficulty and/or having to borrow further. Indeed, this was borne out by the fact Miss R took out another unsecured loan just three months after the lending in question.

With this being the case, I'm provisionally minded to conclude that MBFS should not have agreed to lend.

Did MBFS act unfairly or unreasonably in some other way?

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below results in fair compensation for Miss R in the circumstances of her complaint.

For the reasons I've explained, I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

Putting things right

As I don't think MBFS should have agreed to lend, I don't think it is fair for it to apply any interest and charges under the agreement. However, as our investigator noted, Miss R has had the use of the vehicle for 36 months. I think it's fair that Miss R pays something for that use. After all, MBFS remained the owner of the car and Miss R would likely have had to pay to stay mobile if she hadn't had the use of the car over that time.

² In the event it looks like only the loans held with Sainsburys and Barclays were settled.

There isn't an exact formula for working out what a fair usage charge should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement and Miss R's usage of the car, for example.

I agree with our investigator that, in this case, I think it would be fair for MBFS to retain £300 a month for each month Miss R had the car as a usage charge. This means MBFS can only ask her to repay a total of £10,800. Anything Miss R has paid over this amount should be treated as an overpayment.

As the agreement has been ended and the car returned, to settle this complaint I'm provisionally minded to conclude MBFS should:

- Calculate how much Miss R repaid in total (including the deposit) and deduct £10,800 for fair usage; and*
- Refund any payments Miss R has made above this amount, along with 8% simple interest per year* from the date of payment to the date of settlement; and*
- Remove any adverse information recorded on Miss R's credit file regarding the agreement.*

**HM Revenue & Customs requires MBFS to take off tax from this interest. MBFS must give Miss R a certificate showing how much tax it's taken off if Miss R asks for one.*

Responses to my provisional decision

Miss R accepted my provisional decision with no further submissions.

MBFS said it was in support of my decision, although it said that a different approach to redress would be fairer. It said that, had it not lent to Miss R, she would likely have kept her existing vehicle and paid the finance on that. So, MBFS said it should retain £332 per month (which is what Miss R was paying on her other vehicle) rather than £300 per month (as proposed in my provisional decision) for the period of the agreement to date.

Miss R provided evidence that she did keep her existing car and the finance on that vehicle ran the full term (alongside – at least for a period of time - the finance in question).

I shared this information with MBFS and, in doing so, advised it that the redress proposed in my provisional decision remains, in my view, the fairest way to resolve matters. I invited it to reconsider its position in light of this information in an effort to bring matters to a swifter resolution without the need for a final decision.

MBFS did not respond to the initial deadline set or a subsequent deadline set in a chaser email. With that being the case - and in order to bring matters to a close - I will proceed to issue a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In my provisional decision I set out my intended findings and the reasons for them.

Both parties appear to accept my conclusion that the lending should not have been granted. And I've not received any evidence that leads me to reach a different conclusion with

regards to the lending decision. So, I remain of the view MBFS should not have agreed to lend. With regards to how matters should be put right, I am not minded to depart from what I said in my provisional decision.

Miss R has provided evidence her existing finance ran to term – in other words it did not come to end when the finance in question was taken out. Therefore, Miss R continued to pay £332 (this being what she was paying towards her existing vehicle) as well as the repayments for the finance in question. So, I do not agree MBFS should retain £332 per month per month as it has suggested. Instead, I think MBFS should be able to retain £300 per month as a usage charge for the reasons I explained in my provisional decision.

I therefore adopt the findings set out in my provisional decision – and my resolution proposals – in full in this final decision.

Putting things right

For clarity, I consider a fair resolution to be for MBFS to take the following steps:

- Calculate how much Miss R repaid in total (including the deposit) and deduct £10,800 for fair usage; and
- Refund any payments Miss R has made above this amount, along with 8% simple interest per year* from the date of payment to the date of settlement; and
- Remove any adverse information recorded on Miss R's credit file regarding the agreement.

*HM Revenue & Customs requires MBFS to take off tax from this interest. MBFS must give Miss R a certificate showing how much tax it's taken off if Miss R asks for one.

My final decision

For the reasons I've set out here and in my provisional decision, my final decision is that I uphold Miss R's complaint. To resolve matters MBFS must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 14 July 2025.

Ross Phillips
Ombudsman