

Complaint

Mr M complains that Mercedes-Benz Financial Services UK Limited (“MBFS”) unfairly entered into a hire-purchase agreement with him. He says it was irresponsible to lend to him and he was pressured into taking the finance.

Background

In March 2017, MBFS provided Mr M with finance for a van. The cash price of the vehicle was £19,143.00. Mr M paid a deposit of £3,295.23 (which it appears was made up of a part exchange value Mr M received for his previous vehicle) and applied for finance to cover the remaining £15,847.77 he needed to complete his purchase. MBFS agreed to provide this finance and entered into a hire-purchase agreement which had a 60-month term with Mr M.

The hire-purchase agreement had total interest, fees and charges of £2,453.23 (made up of £2,293.23 in interest, an acceptance fee of £150 and an option to purchase fee of £10). The total amount to be repaid of £18,301.00 (not including Mr M’s deposit) was due to be repaid in a first monthly instalment of £452.35 (which included the acceptance fee), followed by 58 monthly payments of £302.35 and then a final payment of £312.35 (which included the option to purchase fee).

Mr M’s complaint was considered by one of our investigators. He didn’t think that MBFS had done anything wrong or treated Mr M unfairly. So he didn’t recommend that Mr M’s complaint should be upheld.

Mr M disagreed with our investigator and the complaint was passed to an ombudsman for a final decision.

My findings

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

We’ve explained how we handle complaints about irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Mr M’s complaint.

Having carefully considered everything, I’ve decided not to uphold Mr M’s complaint. I’ll explain why in a little more detail.

Given Mr M’s response to our investigator, I do think that it would be helpful for me to set out what we consider when looking at a complaint about irresponsible lending. Firstly, we consider what a firm did to check to understand whether the loan payments were affordable (asking it to evidence what it did) for the borrower and determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

When thinking about these matters, generally, we don’t think it is unreasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship. But we might think it

needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion – indeed the regulator's rules and guidance did not and still do not mandate a list of checks to be used. It simply sets out the types of things that a lender could do.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what it did was proportionate to the extent it allowed the lender to reasonably understand whether the borrower could make their payments. It's also important for me to say that if we don't think that the lender did enough to establish whether the repayments to an agreement was affordable, this doesn't on its own mean that a lender provided finance irresponsibly.

Indeed we would usually only go on to uphold a complaint in circumstances where we were able to recreate (or at the very least understand) what reasonable and proportionate checks are likely to have shown – typically using information from the consumer. And this clearly shows that the customer was unlikely to have been able to make their payments because they were unaffordable, or it was clear that providing credit in such circumstances was likely to result in the borrower experiencing harm or suffering adverse consequences.

I've kept this in mind when deciding Mr M's complaint.

MBFS says it agreed to Mr M's application after it obtained some information from Mr M on his circumstances. MBFS says it also carried out credit searches on Mr M which showed up some existing credit which it factored into its assessment. Furthermore, MBFS says that Mr M would have enough left over to meet his regular living costs once his payments to his existing creditors was deducted from his income. On the other hand, Mr M says that it was irresponsible to lend to him.

I've thought about what Mr M and MBFS have said.

The first thing for me to say is that MBFS was aware that Mr M had a County Court Judgment ("CCJ") recorded against him. MBFS has also confirmed that its searches also showed Mr M had some other unsecured debt too. I don't think that MBFS reacted proportionately to this information, or that it was fair and reasonable for it to determine that Mr M would be able to make his monthly payments from this information.

In my view the presence of a CCJ, in combination with the amount of the monthly payment Mr M was committing to and the length of time of the agreement was due to run for, all meant that MBFS needed to find out more about Mr M's income and his expenditure.

As I've explained, where a firm failed to carry out reasonable and proportionate checks before providing credit to a customer, I need to recreate reasonable and proportionate checks in order to get an indication of what such checks would more likely than not have shown.

So I've considered the information Mr M has provided with a view to understanding what reasonable and proportionate checks are more likely than not to have shown. As I've set out, I think that MBFS needed to take further steps to ascertain Mr M's income and expenditure in order for its checks to have been proportionate.

Having carefully considered the information Mr M has provided, I'm satisfied that MBFS carrying out further checks is unlikely to have seen it reach a different decision on whether to lend in this instance. I say this because the information Mr M has provided does appear to show that when his discernible committed regular living expenses are combined with his payments to his existing credit commitments and then deducted from what he received each month, he does appear to have had the funds to make these monthly payments.

I accept that Mr M's actual circumstances may not have been fully reflected either in the information he provided, or the information. However, I can only consider what MBFS is more likely to have learned as a result of proportionate checks. And it seems to me that MBFS carrying out reasonable and proportionate checks will have shown the monthly payments to have been affordable for Mr M and would not have shown that he would more likely that not experience significant adverse consequences as a result of this agreement.

So overall and having carefully considered everything, while I'm satisfied that MBFS' checks before entering into this hire purchase agreement with Mr M did not go far enough, I'm not persuaded that further checks would have shown MBFS that Mr M could not have afforded the monthly payments, or that it shouldn't have entered into the agreement with him.

In reaching my conclusions on Mr M's complaint, I've also considered that Mr M has said that he felt pressured into taking this agreement. But in circumstances where Mr M freely chose to make a vehicle purchase at the time he did and he has not made a persuasive argument as to what it was that caused him to feel pressured into taking what, on the face of things, appears to have been an affordable agreement, I've not been persuaded to uphold Mr M's complaint on this basis either.

For these reasons, I don't think that MBFS lent irresponsibly to Mr M or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A Consumer Credit Act 1974 would, given the facts of this complaint, lead to a different outcome here either. So I'm not upholding this complaint. I appreciate that this will be very disappointing for Mr M. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

My final decision is that I'm not upholding Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 2 August 2024.

Jeshen Narayanan
Ombudsman