

The complaint

Mr A has complained about the way Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance (MBFS) administered a hire purchase agreement.

Mr A has been represented but, to keep things simple, I'll mainly refer to Mr A throughout.

What happened

The circumstances of the complaint are well known to the parties, so I won't go over everything again in detail. But in summary, MBFS entered into a hire purchase agreement with Mr A in July 2022 for the supply of a new car. The car cost around £33,600. The agreement set out there was a deposit of £2,500 and it was to be paid back over 60 months with monthly repayments of around £435.

Mr A says he wasn't present when the agreement was taken out. He says the car was acquired by his daughter. Mr A says his daughter went to the dealership and said when discussing finance options, she was offered to do it jointly. Mr A's daughter has given some detail about the negotiations. She had a car to part exchange and originally wanted to apply for the finance for the new car herself. She says the dealer told her if her own application was declined there could be an issue if someone else was to put in the application with the same part exchange vehicle recorded. She says the dealer told her these sorts of applications were often refused so that sales advisors weren't amending deals to get finance approved. She said if she was refused finance, she'd likely have to sell the part exchange vehicle separately. Mr A's daughter said she was unsure so wanted to speak to her parents.

Mr A's daughter said she was asked to do a manual proposal form for herself and one for her parents to complete. Mr A's daughter said the deal was arranged on the basis that Mr A would be a guarantor and but that she would make repayments. Mr A's daughter said she spoke to Mr A briefly about it. She said the dealer told her they would both be credit checked and that the application was more likely to succeed. Later, Mr A's daughter said she couldn't reach Mr A at the time of the application. She said the dealer told her the car could only be held for 24 hours without a live finance proposal, and so he asked her if she could fill it out. Mr A's daughter said she wanted to sort out a time to complete the forms with Mr A, but the dealer asked if Mr A's wife could complete the forms herself. Mr A's daughter said it was a stressful ordeal and she was put under pressure to give information quickly and that Mr A wasn't available at the time.

Mr A's daughter said she paid a £1,000 deposit and arranged insurance cover in her name, which was sent to her email address by the manufacturer insurance company.

On collecting the car Mr A's daughter said she noticed the paperwork was in Mr A's name, and she says the dealer told her this was because he was the lead guarantor. Mr A's daughter said she was reassured by the dealer that she'd be able to manage the account when she logged in and that she'd be sent details of payments and so on in the post. Mr A's daughter said when she logged in, she was unable to see her details anywhere. She also said the V5 wasn't in her name originally and had to be transferred. She said this led to issues. She was also unable to use the features in the online portal.

MBFS said the car was taken out in Mr A's sole name. He complained when he found out and reiterated he didn't visit the dealer.

MBFS sent a final response saying it reached out to the dealer for comments. I can't see it received a response initially, but MBFS said it relied on the signed finance agreement as evidence of what was agreed at the point of supply. It said no credit application was put through in Mr A's daughter's name and that it asked security questions to identify Mr A. It also referred to other documents being signed by Mr A. MBFS didn't uphold the complaint, but it offered £200 because it took longer than usual to provide its response. Mr A decided to refer his complaint to our service to consider.

One of our investigators looked into things and decided to uphold the complaint. He said on balance he didn't think Mr A received or accepted the hire purchase agreement. The agreement was sent to Mr A's wife to be accepted and that his wife would have likely known the answers to the security questions MBFS asked. Our investigator said it looked like Mr A's daughter collected the car. It also seemed as though the dealer didn't verify Mr A's identity via documentation. Our investigator said MBFS should unwind the agreement; arrange return of the vehicle; remove record of it from Mr A's credit file; and refund the deposit with 8% simple annual interest.

MBFS didn't agree. It referred to documents that were signed allegedly by Mr A. It said it didn't think the security questions could have been completed without participation from Mr A. It said Mr A's daughter lives at a different address. It said at no stage was it made aware of Mr A's daughter being subject to the application. It said Mr A completed the direct debit form with his bank details and that this account was used for payment. It also said the vehicle was registered to Mr A originally indicating he had knowledge of it being in his name.

We put MBFS's response to Mr A. He reiterated he was supposed to be a guarantor for his daughter and wasn't involved in the acquisition of the car. He said he'd never attended the dealership. He said he supplied his details on the basis he would be liable but only if his daughter was unable to pay. He said there's evidence his wife's email address was used throughout the application. His wife knew the answers to security questions, and that his daughter dealt with the costs and deposits which she'd shown evidence of. He said his bank details were given on the basis of him being a guarantor and his daughter had been sending him the money for the payments. Mr A explained he'd never been insured on the car, he'd never driven it and he said he didn't collect it. He said the confirmation of registration wasn't signed and the situation has been inconvenient for him and his daughter.

As things weren't resolved, the complaint has been passed to me to decide.

I asked our investigator to contact the parties for further information. I wanted to clarify the deposit amount because the agreement showed a deposit of £2,500 but there was other evidence it was £4,000. I wanted to know if there was any evidence there was a request to change the direct debit details and I wanted to know what led to the complaint being raised in November 2022.

I also wanted to see MBFS's contact notes; whether the £200 offer was still available; and details of any response it had from the dealer following its investigation.

Mr A's daughter responded to say she wasn't sure why the agreement said £2,500 when £4,000 was paid, but she said there was a part exchange of a different vehicle. She said evidence of trying to change the direct debit details to her account would be on the MBFS online portal. She said she was told she'd only be able to change the direct debit details after the first payment went out. She said there was no delay in raising the complaint and supplied a detailed timeline of events. She said she noted some of the details on the online portal was

in her name and some was in Mr A's name, and his wife's email. She said she was unable to use the service. She kept calling the dealer but didn't get the help she needed. She supplied copies of communications between her and the dealer.

MBFS responded to say the £200 offer still stood. It said the dealer had told it no other customer other than Mr A was noted in connection with the purchase. It said it didn't have a demands and needs form but it said another form was electronically signed by Mr A, and that it was his details on the vehicle invoice. It supplied a call recording with it and the dealer where the dealer explained that everything was in Mr A's name. The dealer said it wasn't sure how it could access the file. It says Mr A bought the car, but it couldn't see if it was ever processed in Mr A's daughter's name. It had no record of emails or anything else it could supply.

The invoice set out MBFS received a deposit of £1,000 and that there was a net part exchange allowance of minus £1,500. It said £3,000 was due from Mr A, which I understand his daughter also paid. So this explained why the net deposit amount was £2,500.

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.

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr A and MBFS that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

MBFS is holding Mr A liable for a hire purchase agreement. Our service is able to consider complaints relating to these sorts of regulated consumer credit agreements. MBFS can also be held liable for negotiations carried out by the dealer.

I think the key question I need to answer is whether Mr A was adequately informed about how the agreement was set up.

I've thought about the parties' arguments and supporting evidence.

MBFS

MBFS has said the application was put through in Mr A's name. It said it had made enquiries with the dealer. It approved the agreement and relied on the signed finance agreement. It said no application was put through in Mr A's daughter's name, and that it asked security questions to identify Mr A. It referred to other documents being signed by Mr A and didn't uphold the complaint.

The dealer

The main evidence involving the dealer is a phone call between MBFS and it about the deal. It said everything was put through in Mr A's name, but it couldn't supply any further supporting documentation because systems had changed.

Mr A and his daughter

Mr A and his daughter have given detailed consistent and credible testimony about the negotiations that took place. Mr A's daughter has supplied copies of emails between her and the dealer. From what I've seen, she was the main negotiator with the dealer. I understand she negotiated the part exchange. She's given a plausible explanation for why she didn't apply for the agreement herself off the back of the dealer's recommendation because there was a part exchange vehicle involved. She asked for access to the online portal shortly after the agreement was set up. She also asked why she hadn't been sent a copy of the finance agreement. She was put on the 7-day complimentary insurance. The forms were sent to Mr A's wife to complete. I'm not sure why they wouldn't have been sent to Mr A if he was the one making the application. Mr A's daughter also asked for the link for the payment to be made. I think she made the two payments of £1,000 and £3,000. And the V5 was changed to Mr A's daughter's name. She's acted in a way that I think is consistent with a customer who thought they were part of the arrangement.

Everything I've seen points towards Mr A's daughter being the person that wanted the car; the person that negotiated with the dealer; the person that was going to use the car and pay for it. She's given a reasonable explanation for why Mr A was going to be involved. Mr A has acknowledged he thought he'd be acting as a guarantor.

Most of the documents were e-signed (including the key document – the finance agreement) so it's hard to conclude who did that, particularly given they were sent to Mr A's wife. Some forms aren't available or weren't completed. There's a confirmation of registration details form that indicates Mr A initialled it. And there's a new vehicle release note that is signed allegedly by Mr A. But I can't tell it was definitely Mr A who signed the documents after comparing the signature on his driving licence.

Moreover, while security questions were asked, the questions may have been known by Mr A's wife, and it looks like details were sent to her. Email exchanges indicate the dealer asked Mr A's daughter if she'd spoken to her mother about the forms that needed completing. If the deal was for Mr A, I think the dealer should've made sure it was dealing with Mr A and that Mr A was happy with the terms of the agreement. The cash price of the car was over £30,000 and I can't see MBFS or the dealer obtained identification documents from Mr A which might've supported the argument he was present, aware, and involved in the negotiations.

Based on what I've seen, I'll never know exactly what happened. But where the evidence is incomplete or inconclusive, I'm able to reach my conclusions on the balance of probabilities. Having considered everything, I think, on balance, that I've not seen enough to conclude Mr A was adequately informed about the nature of the arrangement. I think he was willing to be a guarantor. Even if it looks like he's given some sort of consent for it, I've not seen enough to conclude he was adequately informed he'd be the sole applicant. I think this is supported by Mr A's daughter's testimony and the supporting evidence I've referred to above. I'm conscious the agreement sets out Mr A had to keep the vehicle in his possession and under his control. But the evidence I've seen indicates the car was always for his daughter.

MBFS is responsible for the negotiations carried out by the dealer. On balance, given I don't think Mr A would have accepted the arrangement had he been adequately informed I agree with our investigator that Mr A should now be able to end the agreement and return the car. I agree it's fair for MBFS to keep the monthly payments in recognition of the use of the car. But I also agree it's fair for MBFS to reimburse Mr A the deposit paid. While I appreciate this came from his daughter, in the circumstances, I think it's fair for MBFS to refund it to Mr A and he can come to an arrangement with his daughter. It would seem unfair that this is lost as a result of the way the agreement was set up. Mr A, who is the eligible complainant here, hasn't been deprived of this money so, unlike the investigator, I'm not going to direct MBFS add 8% interest.

MBFS offered £200 in recognition of the delays in responding to the complaint. I think this is broadly fair, and I'm not going to direct it to do more.

My final decision

My final decision is that I uphold this complaint and, to the extent it's not done so already, direct Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance to:

- end the agreement with nothing further to pay;
- collect the car at no further cost to Mr A;
- refund the advance payment of £2,500;
- pay £200 compensation;
- remove any adverse information from Mr A's credit file in relation to the agreement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 4 March 2024.

Simon Wingfield
Ombudsman