

The complaint

Ms B complains that she was mis sold a hire purchase agreement with Mercedes-Benz Financial Services UK Limited ("MBFS") to acquire a car.

What happened

Ms B was looking to acquire a car in late 2018. She has told us that she was in a position to acquire the car in cash, but that she was persuaded to take out a hire purchase agreement over a four year period instead. Ms B has told us that a salesperson advised her not to buy the car in cash and said it was better not to put all her capital into the car.

Ms B has told us that the salesperson went on to say that at the end of the four years, if there was any additional capital value in the car, it would be returned to her once she returned the car.

When she reached the end of the agreement, she realised that any additional value in the car would only be hers if she either part exchanged the car for another vehicle or made the final balloon payment to own the car.

She complained to MBFS, but they didn't uphold the complaint. They said they couldn't comment on any individual conversations held with a member of staff at the dealership which they weren't party to, but having reviewed the agreement, they were satisfied that it explained the process correctly, and as this was the record of what had been agreed between the parties, they were satisfied that nothing wrong had occurred.

Unhappy with this, Ms B brought her complaint to our service. An investigator here investigated it and did not uphold it. They said that as there was no record of the specifics discussed when the agreement was taken out, they felt that on the balance of probability, looking at the paperwork that had been signed, they weren't persuaded that any mis sale had occurred.

Ms B wasn't happy with this and asked for an Ombudsman to make a final decision. She said that making a decision on the balance of probabilities wasn't fair, it should be down to the parties to provide evidence, and she felt that she didn't think the dealership could provide evidence of a compliant method of offering finance agreements. She didn't feel the business had provided us with evidence that they gave her the correct options at the time.

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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any

regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

There are two parts to the complaint that I will answer. The first is where Ms B has said that she was advised not to buy the car for cash, but to take finance out. The second is about the fact Ms B says she was told she would get any excess value in the car returned to her when the agreement finished.

As has been previously discussed, there is no written or recorded evidence of the conversations which took place at the dealership. As such, my role is to look at the evidence that is available, consider Ms B's testimony, and come to a conclusion as to what is most likely to have happened.

Ms B says it should be the business's responsibility to provide evidence of these things, but I'm satisfied that the finance agreement she signed up for is evidence of the agreement reached. I also recognise that there was likely a "terms of business" document or similar that was given to Ms B, which would have explained the scope of the salesperson's advice. This hasn't been provided by MBFS but it's likely that it will have been provided at the time back in 2018. But even if it wasn't, I'm satisfied that paperwork has been provided which confirms the details of the agreement Ms B signed up to.

There's no corroborating evidence to show anyone at the car dealership gave Ms B advice about whether to buy the car in cash, or to take a finance agreement to fund some of the cost. The salesperson would not be authorised to provide this kind of advice; they would take a customer's preferences for whether they want to pay a deposit, and how much. Part of the finance application process would likely just include asking how much deposit a consumer would like to put down.

They might discuss whether any discount is available for purchasing in cash or on finance. But no salesperson would be able to give advice around whether a consumer was better to buy a car cash or on finance. That's a complicated piece of advice, probably only for a financial advisor to work out whether money in the bank is better than paying interest on a finance agreement.

I've gone on to think about the likelihood of this conversation occurring in 2018. Returns on capital held in the bank or similar were very low still at that time as interest rates were very low. Ms B has told us she had the funds available to buy the car in cash, so would likely know this. The finance agreement here which was provided to Ms B shows an interest rate chargeable of 5.95% fixed, 6.1% APR.

If there was a conversation about paying cash or taking the car on finance, I'm not persuaded that any advice would have been given by the salesperson about this. The paperwork provided clearly shows the interest rate of the finance, and the application process for the finance would have likely just involved Ms B being asked what deposit she wanted to put down.

I'm not persuaded that any advice to take out finance instead of paying cash would have happened, and I also don't see any reason why Ms B would have accepted that kind of advice if it was offered. The paperwork she signed clearly shows the interest rate being charged on the agreement for four years, and the total amount payable, so she can see the cost of the finance compared to the option she says she had to just pay cash for the car.

Moving on, I have next considered the issue about Ms B saying that she was told by the salesperson that she would get any additional value of the car paid back to her when the agreement ended, compared to the final balloon payment which was outstanding.

Again, I'm not persuaded that this conversation is likely to have happened. The paperwork provided to Ms B in the form of her finance agreement makes no mention of this and confirms what the balloon payment would be at the end, titled "Optional Purchase payment". This is further explained in the "Duration and repayments" section. There is no mention of any additional money being returned to a consumer.

The investigator here when they looked at the case explained that it might be that a salesperson had described a situation where this additional value would benefit the consumer in a part exchange scenario, or if they paid the optional purchase payment so they owned the car that had a higher value than the optional purchase payment. This is possible, but again, we don't know details of the conversation.

The finance agreement was provided to Ms B at the time, to allow her to check she understood all the terms and detail of the agreement and wanted to proceed. It's a customer's responsibility to read this agreement before signing it, to make sure it reflects the agreement they believe they are signing up for.

If Ms B felt that she was going to get back some money if the car held its value well and was worth more than the balloon payment, I'd have expected her to look for the section of the agreement explaining this, to make sure she understood it correctly and it was all agreed.

I'm not persuaded that Ms B was told at the interview in 2018 that she would just receive back any additional value in the car at the end of the agreement. But even if she had been, MBFS have provided comprehensive details of the agreement in the paperwork which followed to allow her to ensure she understood it. This paperwork once read would provide the correct information, which would serve to correct any misunderstanding she may have had.

Overall, I'm not persuaded that Ms B was wrongly advised to take out finance for the car rather than buying it in cash. Neither party can provide any evidence about this, and I'm not persuaded that Ms B would have taken out this finance agreement without wanting to pay part cash as a deposit and put some of the cost on finance. I'm also not persuaded that she was given any wrong advice about the car value at the end of the agreement and how she might benefit from that.

I empathise with any misunderstanding here, but I'm satisfied that MBFS provided Ms B with all the correct information, and I've seen no evidence of any mis sale. I won't be asking them to do any more.

My final decision

I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 1 December 2023.

Paul Cronin
Ombudsman