

The complaint

Mrs B complains that Mercedes-Benz Financial Services UK Limited (Mercedes) irresponsibly granted her a hire purchase agreement that she couldn't afford to repay.

What happened

In May 2022 Mrs B acquired a vehicle financed by a hire purchase agreement from Mercedes. Mrs B was required to make 48 monthly repayments of £503.26 followed by one optional purchase payment of £13,775. The credit agreement states that the total amount repayable was £46,185.04. The agreement shows a deposit of £8,243.56. Mrs B and her representative believes Mercedes failed to complete adequate affordability checks. Mrs B and her representative says that if it had it would've been clear that the agreement wasn't affordable.

Mercedes disagreed. It said it carried out relevant and proportionate checks to satisfy itself that the agreement was affordable for Mrs B. It also said that the supplying dealership was unaware of Mrs B's vulnerabilities when completing the sale. It did however offer Mrs B £150 for delays in responding to her complaint.

Our Investigator recommended that the complaint should be upheld. They thought Mercedes hadn't provided them with enough information to be satisfied that its checks were proportionate and that had it completed proportionate checks it would have likely found the agreement was unaffordable for Mrs B.

Mrs B agreed. Mercedes disagreed in part. It accepted that the finance shouldn't have been approved, but it felt that the compensation recommended by the Investigator was unfair. It felt the redress went beyond putting Mrs B back in the correct position. It felt the proposed redress would place Mrs B in a position of betterment. It asked for an Ombudsman to issue a final decision on the matter. The complaint has been passed to me for a decision to be made.

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.

Where evidence is incomplete, inconsistent, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

We explain how we handle complaints about irresponsible and unaffordable lending on our website. I've used this approach to help me decide Mrs B's complaint. Mercedes needed to ensure that it didn't lend irresponsibly as per the rules set out in the FCA's Consumer Credit Sourcebook (CONC). In practice, what this means is that Mercedes needed to carry out proportionate checks to be able to understand whether any lending was affordable for Mrs B before providing it.

Mercedes was required to ensure it carried out adequate checks on Mrs B's ability to sustainably afford the agreement. These checks had to be borrower-focussed and proportionate (see CONC 5.2A). What is considered proportionate will vary depending on the circumstances, such as (but not limited to): the total amount repayable, the size of the monthly repayments, the term of the agreement (CONC 5.2A.20 R), and the consumer's specific circumstances.

Our Investigator found that the finance should not have been approved. And Mercedes have accepted this. So, the remaining issue appears to be solely how best to put things right. Therefore, my decision will focus on whether the recommendation made by our Investigator is fair and reasonable in the circumstances.

The central issue is the fact that our Investigator believes the full monthly repayments made by Mrs B should be refunded, with interest. Mercedes don't feel that it would be fair for Mrs B to receive a full refund as she had been in possession of the vehicle for some time.

There isn't an exact formula for working out what fair usage ought to be. However, in deciding what's fair and reasonable, I've thought about the amount of interest charged on the agreement, the likely use Mrs B had of the car and the costs she would likely have incurred to stay mobile if she'd never entered into this agreement. In this specific case Mrs B hasn't used the vehicle at all since acquiring it. As she hasn't used the vehicle, I don't think there is any notable benefit she's received from having the agreement incorrectly approved.

So, I don't think it would be fair or reasonable for Mercedes to retain any amount of the monthly payments Mrs B has paid for each month she had use of the vehicle. Again, I've reached this conclusion as Mrs B has not used the vehicle once since obtaining it, and so has also not saved on any travel costs to stay mobile during the period. There is no clear benefit the possession of the car has afforded her.

By directing Mercedes to refund the full monthly repayments I'm attempting to put Mrs B, as close as possible, back in the position she would've been in were it not for the finance being unfairly approved. I can't say that ownership of the vehicle has saved her on any particular costs or afforded her some otherwise unavailable conveniences. She simply hasn't used the vehicle. Ultimately the finance should not have been approved and the cost of resolving the matter fairly for Mrs B is now the responsibility of Mercedes.

Putting things right

As its agreed that Mercedes should not have approved the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement.

To put things right Mercedes-Benz Financial Services Limited should:

- End the agreement in full and collect the car with nothing further for Mrs B to pay
- Refund the £8,243.56 deposit, adding 8% simple interest per year* from the date of payment to the date of settlement
- Refund all the payments Mrs B has made towards the agreement, adding 8% simple interest per year* from the date of payment to the date of settlement
- Once Mercedes has received the vehicle back, it should remove any adverse information recorded on Mrs B's credit file regarding this agreement.

*HM Revenue and Customs requires Mercedes to deduct tax from the interest payment referred to above. Mercedes must give Mrs B a certificate showing how much tax it's deducted if she asks for one.

My final decision

My decision is that I uphold this complaint and direct Mercedes-Benz Financial Services UK Limited to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 27 October 2023.

Paul Clarke
Ombudsman