

## **The complaint**

Mrs B has complained about the charges that Mercedes-Benz Financial Services UK Limited (MBFS) applied when she handed back a car she had acquired under a hire purchase agreement.

When I refer to what Mrs B has said, and MBFS have said, it should also be taken to include things said on their behalf.

## **What happened**

In July 2016, Mrs B entered into a hire purchase agreement with MBFS to acquire a brand-new car. The agreement was for 48 months.

Mrs B handed back the car at towards the end of February 2020, when she decided to voluntarily terminate her agreement. She says that 31 days later, MBFS asked her to pay £260 for damages to the car. This was for damages to the car that MBFS considered were outside of fair wear and tear.

Mrs B was unhappy so, towards the end of March 2020, she wrote to MBFS saying that the 31 days for them to respond to her was clearly excessive and beyond the acceptable industry standard of 28 days. In this correspondence she says that the car was maintained in a reasonable condition throughout the period of the finance agreement, and therefore she does not think she should have to pay the £260. She says that when the sales person at the dealership initially inspected the car and highlighted two small areas of minor damage, she says she enquired if this would involve extra costs, and, she says, she was told that no extras were payable based on the fact the car had very low mileage, no wheel scuffs and was in excellent condition. But, she says, that when she went to pick up the new car and return her car, she was asked to sign an identical document by a different salesperson. She says that this document had costs added but that these costs were never mentioned before, so she refused to sign and added a comment that she was never advised of any extras.

When Mrs B wrote to MBFS she also said that the Vehicle Return Standards (VRS) are not the most appropriate given the circumstances. She says, it is generally accepted that a car will, over a prolonged period, sustain some damage in addition to reasonable wear and tear. So, she says that it is unreasonable to expect the car to be kept in mint condition throughout the period of the finance agreement. She also says that the standards fail to consider the fact that a car is likely to endure more damage the older it becomes. She goes on to say that the same standards will be applied to a car that is nearly new, as well as a car that might be four years old. She thinks that if MBFS wants to charge her for the damage they should pay for the car to be inspected by a regulated independent third party.

In April 2020 MBFS wrote to Mrs B and said that they will not be upholding her complaint. MBFS say that VRS does take into account the age of a car as their standard leases are two, three and four years, and the damage noted during the inspection exceeds their VRS. MBFS say that to ensure she was aware of the expected return condition of the car, they provided her a copy of their VRS at the beginning of the agreement. So, they say, this gave Mrs B ample opportunity to familiarise herself with their fair wear and tear allowances, and to

have any repairs carried out at her own cost. They go on to say that their prices are benchmarked against industry standard guidelines and would stand up to independent scrutiny.

MBFS say they will not be looking to get the car independently inspected as it has now moved on to its next purpose, and they are not aware of its location at this time. They concluded by saying that they are satisfied that the inspection has been undertaken correctly.

Unhappy with MBFS's response Mrs B brought her complaint to our service.

Our investigator thought the complaint should not be upheld.

Mrs B disagreed with the investigator.

So, the complaint has been passed to me to decide.

### **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 unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

Mrs B acquired the car under a hire purchase agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. Mrs B's agreement with MBFS sets out that she needs to maintain the car in a condition which is consistent with the VRS and, if she does not look after the car properly, she will be responsible to compensate MBFS for the cost of repairs.

I know that Mrs B thinks that the standards fail to take into account the fact that a car is likely to endure more damage the older it becomes, and that the car should be inspected by a regulated independent third party. British Vehicle Rental & Leasing Association (BVRLA) set out industry guidance on what is considered fair wear and tear standards. When Mrs B acquired the car it was brand new, so I think it is reasonable to consider the BVRLA standards when deciding whether the damage is outside of reasonable wear and tear. Since the car was brand new when acquired by Mrs B, most likely it was in a perfect condition, and free from minor defects. With that said, the car, most likely, had no scratches or damage. So, I reviewed the inspection report to see if the damage on the car was outside of fair wear and tear.

At the end of February 2020, the dealership did an inspection when Mrs B opted to return the car through them. During this they noted that the rear bumper had a scratch up to 25mm through the paint, the rear bumper had a scratch 25 to 100mm through the paint, the quarter panel offside rear had a dent between 10mm and 30mm and the door offside front was chipped. The inspection also noted that the tread on the four tyres were 4mm which they considered legal. On this inspection report, the dealership noted damage amounting to £260 and this is the amount Mrs B was invoiced by MBFS. This is the inspection report Mrs B refused to sign.

I know that Mrs B said that she wanted a second opinion on the damage. But there was another inspection completed at the beginning of June 2020. MBFS most likely should have done their own inspection sooner, but the time taken is not unreasonable considering the car was not able to be collected from the dealership due to the lockdown, and all non-essential

work had stopped at that point. This inspection found broadly the same areas of damage plus some additional issues not noted during the inspection at the dealership. So, considering the circumstances of this complaint, including the fact that two separate inspections found broadly the same damage, I don't think it would be reasonable to direct MBFS to do an evaluation by a third party.

The report, completed at the beginning of Jun 2020, mentioned that the V5 registration document was missing, which they thought would cost £25 to replace. And the two areas of damage that were considered outside of fair wear and tear, the same two areas that were noted on the inspection from the dealership, were estimated to cost £300. I will address these two areas below. And, it is also important to note that I'm not looking in detail at the second inspection report (completed at the beginning of June 2020) because MBFS are only charging Mrs B for the damage listed in the initial report from the dealership - the £260 - and not for any of the additional damage that was found later.

In deciding whether MBFS have acted fairly in relation to each charge, I've taken into consideration the terms and conditions of the hire purchase agreement, BVRLA's guidelines, as well as the age and mileage of the car when it was returned.

#### Front bumper

The BVRLA guidance sets out that surface scratches of 25mm or less where the primer or bare metal is not showing are acceptable, provided they can be polished out. From the pictures provided in the inspection report, I can see that the scratch on the front bumper is more than 25mm. So, there is damage which I consider to be representative of damage that is outside of fair wear and tear.

#### Quarter panel offside rear

The BVRLA guidance sets out that dents of 15mm or less in diameter are acceptable, provided there are no more than two per panel and that the paint surface isn't broken. From a picture in the report I can see there appears to be a dent which is more than 15mm in diameter. I consider this dent to be outside of fair wear and tear too.

I understand that Mrs B says that, when the dealership initially inspected the car and highlighted the areas of damage, she enquired if this would involve extra costs and was told that no extras were payable, based on the fact the car had very low mileage, no wheel scuffs and was in excellent condition. She says that later when she returned the car, she was asked to sign an identical document that had the amount of £260 on there.

I do not know what specifically was discussed between Mrs B and the dealership, but her hire purchase agreement does not indicate that she would be entitled to a refund or a credit if she travelled less than the allowed mileage, and it explains that she will be liable for any damage outside the standards allowed. The voluntary termination letters from MBFS, one of which she signed herself, state that she will be liable for damages to the car which are outside the return standards. Considering all of this, and the circumstances of this complaint, I think most likely Mrs B knew that she would be liable for the damages to the car, and I don't think MBFS acted unreasonably by invoicing her £260 for the items that are outside of fair wear and tear.

Mrs B has also mentioned that she has been receiving invoices while her complaint has been at our service, which has compounded unnecessary stress in this matter. As such, she says she doesn't accept the investigator's findings which, she thinks, disregard the bullying element. But it is important to note that in this decision I'm only looking at the events that

have been raised by Mrs B with MBFS towards the end of March 2020. So, this decision only includes the events that are addressed by the letter MBFS sent to Mrs B on 16 April 2020.

Mrs B has mentioned bad customer service and elements of bullying. But, I have not been presented with anything persuasive to make me think that it is more likely than not, that MBFS had bullied her in any way, or that they have caused her any distress and inconvenience warranting compensation for poor/bad customer service.

Another issue that Mrs B has mentioned is that she received the invoice for the charges 31 days after the return of the car, which she says is excessive and beyond the normal industry acceptable standard of 28 days. I agree that Mrs B should have received this invoice for the damages no later than four weeks after the car was returned; as per the BVRLA guidance. But I have considered that the dealership made Mrs B aware that damage charges would be applicable, so most likely she was aware that she would be receiving an invoice, and I'm not persuaded that the extra few days should impact the outcome of this complaint.

Whilst I realise that my decision will come as a disappointment to Mrs B, looking at all the evidence available to me I think, on balance, it was fair and reasonable for MBFS to charge her for the damage. So, I'm not asking MBFS to remove any of the charges.

### **My final decision**

For the reasons set out above, my final decision is that I don't uphold Mrs B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 8 April 2021.

Mike Kozbial  
**Ombudsman**