

## The complaint

Mr C has complained that Mercedes-Benz Financial Services UK Limited (which I'll call MBFS) charged him an additional 16 days' hire when he didn't return a vehicle on time.

## What happened

In November 2015 Mr C took a car on hire purchase from MBFS. The hire purchase agreement was signed by Mr C on 24 November and on behalf of MBFS on 25 November. It recorded that the car was to be delivered on 27 November 2015 and that Mr C would have to make 48 monthly payments of £572.87, starting one month after the date of the agreement.

The hire agreement also said that the period of hire would be 48 months, starting on the date of the agreement.

Under the heading "Option to Purchase" the agreement explained that Mr C could buy the car outright and explained how he could do so. That part of the agreement also included (at section 11.4):

*"If you do not exercise this option ... this Agreement is terminated and you will cease to be in possession of the Vehicle with our consent. You shall forthwith return the Vehicle to us in good condition, repair and working order at your own risk and cost at such address as we may reasonably specify and deliver up all registration and other documents relating to the Vehicle."*

Mr C didn't exercise the purchase option, and on 14 November 2019 B (a company engaged by MBFS to arrange the return of the car) tried to contact him. It left a voicemail, followed by two more over the following week. It also sent a letter on 18 November.

On 25 November Mr C said he'd booked a collection date of 30 November, but B was unable to collect the car on that date, as it was a Saturday. B left a further voicemail on 28 November. The car was finally collected on 17 December, but MBFS charged Mr C a further £389.44 for the time he had the car after the hire period had ended.

Mr C thought that was unfair. He said it wasn't his fault that he was unable to return the car and that he had tried to make arrangements for its collection. He was however unavailable for some of the time and said that he hadn't used the car after the hire period; it had always been available for collection. He referred the matter to this service, and one of our investigators considered it.

The investigator thought that Mr C had tried to arrange a collection date as close as possible to the end of the hire period. When his preferred date wasn't available, he was unable to arrange an alternative for more than two weeks. The investigator accepted what Mr C had said but thought that he had some responsibility to ensure the car was returned. He initially recommended that MBFS charge half the fee for which it had invoiced Mr C. In part, that was because he thought MBFS had passed the matter to a debt collection agency; in fact, that wasn't the case, so he recommended a 30% reduction instead.

Neither Mr C nor MBFS was prepared to accept the investigator's revised recommendation, and so the case was passed to me for review.

I reviewed the case and, because I was minded to reach a different conclusion from that reached by the investigator, issued a provisional decision. I said that section 11.4 of the hire purchase agreement placed the onus on Mr C to return the car; it didn't require MBFS to collect it. Whilst it had been difficult to arrange a mutually convenient time for the car to be collected, I didn't consider that MBFS had been obstructive or was responsible for the delay in returning the car.

Mr C responded to my provisional decision to say that MBFS hadn't in fact provided any option for the return of the car other than collection by B. It hadn't been possible to book a collection date before 17 December. He said too that, even if he wasn't available when the car was collected, his wife could have handed over the paperwork and keys – as in fact happened.

Mr C said too that MBFS had instructed debt collectors, and he provided a copy of a letter asking for payment. That had been sent after this service began looking at the complaint and was subsequently withdrawn. He also provided evidence showing that he hadn't used the car after the end of contract, other than to buy fuel before returning it.

### **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, however, I haven't changed my overall view from that set out in my provisional decision.

I accept what Mr C has said about his use of the car after November 2019. He took a photograph of the odometer on 30 November, showing a reading only six miles less than that recorded at collection. He says he drove the car to buy fuel, as he needed to return the car with no warning lights showing – including the low fuel light. However, as I noted in my provisional decision, it doesn't really make any difference whether he was using the car in that period; he remained in possession of it.

I accept too that MBFS did instruct debt collectors to contact Mr C in June 2020. I agree with him that this was inappropriate in the circumstances. I think however that the appropriate way to deal with that was to end their involvement, and that's what happened.

The main issue here however is the charges levied by MBFS for the late return of the car. Mr C says that the delay was because B didn't have capacity to collect it and that MBFS didn't in fact offer any options other than collection.

As I said in my provisional decision, I accept that there were difficulties in arranging collection of the car. Mr C acknowledges however that he didn't return voicemail messages left in the second half of November. Given that the primary obligation to return the car was his, I might have expected him to do so. MBFS calculated the extra charges from 30 November, but the 48-month term ended on 27 November 2019 (48 months after delivery), and arguably on 24 or 25 November. So, arrangements for the collection of the car really needed to be made before then.

I accept that it was difficult to arrange collection of the car, and that those difficulties were not entirely down to one side or the other. I don't believe however that MBFS or B were obstructive in any way. But, as I've said, the contract made Mr C primarily responsible for

ensuring that the car was returned by the end of November.

### **My final decision**

For these reasons, my final decision is that I don't require Mercedes-Benz Financial Services UK Limited to take any further steps to resolve Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 4 December 2020.

Mike Ingram

**Ombudsman**