

The complaint

Ms W complains about end of contract charges when her hire purchase agreement for a car with Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance ended.

What happened

In March 2016, Ms W entered into a three-year hire purchase agreement with Mercedes. When the agreement ended, in March 2019, the car was inspected shortly before its collection and a report prepared.

Ms W says the car was in an immaculate condition, having been the subject of a re-spray not long before it was inspected. She says that the agent collecting the car remarked on its excellent condition. However, Ms W says that two marks were pointed out to her at the time of the inspection, one on the rear bumper and the other on the right-hand quarter panel. She says she thought both scratches weren't really obvious, were very small and could be considered as fair wear and tear.

The inspector included these marks in the condition report for the car and asked Ms W to sign and note that she disagreed with what he'd recorded, as she was clearly unhappy about them being noted. Ms W did as she was requested, and photos were taken of the damage found. The car was taken away.

Later, in March 2019, Ms W received an invoice for end of contract charges amounting to a total of £420 for the damage to the rear bumper and quarter panel (£210 per item). Ms W challenged the charges and pointed out that work had been undertaken to the car.

Mercedes asked Ms W to produce the invoice for the respray, which she did. Mercedes then said it wasn't able to accept the invoice, as the garage hadn't been VAT registered. Ms W complained to Mercedes about the charges and questioned why it wouldn't accept the invoice.

Mercedes didn't uphold Ms W's complaint. It said the damage to the bumper and quarter panel had been highlighted in the inspection report and was visible in the photos. It was satisfied the damage had been present at the time the car had been inspected. As the repair invoice wasn't date stamped Mercedes said it wasn't evidence that the car had been repaired between the inspection and the car's collection.

Mercedes said that, under the agreement's terms and conditions, there was an obligation on Ms W to compensate it for any damage to the car outside fair wear and tear. The terms also set out that, if the damage wasn't repaired, then Ms W would be liable for the estimated costs of those repairs. Mercedes said it had fairly charged Ms W for the damage that had been found when the car had been returned.

Ms W disagreed with Mercedes and complained to this service. She said that she had returned cars before which had been subject to a re-spray and had not been charged for their condition. She said she thought Mercedes was being unfair in having a requirement

that invoices should come from a VAT registered garage. Ms W also said that she should have received invoices for any repairs that had been carried out on the car, so that Mercedes could prove its loss.

Ms W said she was unhappy at the length of time Mercedes had taken to respond to her complaint, as its final response letter had been sent in July 2019, which was after the 8 weeks set out in its complaint process.

Our investigator didn't recommend Ms W's complaint was upheld. He said that, when considering whether it was appropriate for a business to charge a consumer for damage to a car at the end of a financial agreement, it was useful to refer to the industry standards as to what was and wasn't fair wear and tear. These standards were set by using the British Vehicle Rental and Leasing Association's ("BVRLA") guidelines. And it would be fair for a business to charge for any damage that was considered by the guidelines to be beyond fair wear and tear.

Our investigator said the scratches shown on the photos were clearly visible, and both exceeded the length considered as being fair wear and tear. He said he thought Mercedes was entitled to charge for the damage, and that this damage would have resulted in a loss for Mercedes. And, although he appreciated Ms W was unhappy that Mercedes didn't appear to have had the damage actually repaired, our investigator said he thought it was reasonable that it charged for the potential loss. He didn't think the amounts charged had been excessive.

In regard to the re-spray invoice, our investigator said that this didn't alter Mercedes right to charge for the damage as it had been noted at the time the car had been collected, and either the repairs had been unsuccessful, or the damage had occurred afterwards.

Ms W disagreed with our investigator's view and said the re-sprays had been acceptable before, and she thought the return process had changed. Ms W said that she had been told the car had already been sold on by the agent who collected it, meaning that Mercedes wouldn't have incurred any loss over its condition. Finally, Ms W said she was unhappy at the length of time Mercedes had taken to respond to her complaint.

As the parties were unable to agree the complaint was passed to me.

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 appreciate Ms W is unhappy at the length of time Mercedes had taken to investigate her complaint, but this isn't something I can look into as "complaint handling" isn't a regulated activity, and so is outside of my remit. The issue for me to decide is whether the end of contract charges were fair. However, I've seen that Mercedes says it responded within the 8 weeks, as Ms W had made her formal complaint in June 2019. So, although Ms W may have raised her queries about the end of contract charges prior to June, Mercedes hadn't treated those, at that time, as her making an official complaint. If Ms W is unhappy over this then she will need to raise it with Mercedes.

I've seen Ms W feels strongly that the charges for the two scratches found on the car were unfair. She says that the photos show the damage more clearly than when looked at in real life. However, the agent who inspected the car for Mercedes saw them at the time of his inspection and also pointed them out to Ms W. As the photos don't appear to have been taken with a flash or filter, I think it's reasonable I accept them as evidence of the damage

that was found. Looking at these photos I can clearly see a scratch on the back bumper, and one on quarter panel, which both exceed 25mm in length.

When looking at the BVRLA guidelines, which are accepted as the industry standard of what is and is not fair wear and tear, I can see scratches over 25mm are considered to be damage outside of fair wear and tear. So, I think it was reasonable for Mercedes to charge for these scratches to the car's bodywork.

Ms W says that, even if there was damage, Mercedes didn't suffer a loss as it had sold the car before it had been collected. I don't know what the re-sale arrangements were for the car, but I think it's reasonable to accept that any damage to it, that was outside of fair wear and tear, is more likely than not to have had an impact on its value. So, I can't reasonably say that the bodywork damage found wasn't a potential loss to Mercedes. And I think it's reasonable for Mercedes to have charged Ms W for that potential loss.

Under the terms and conditions of the agreement, which Ms W signed, it sets out that if damage is sustained by the vehicle that Mercedes "*reasonably consider affect the value*" then Ms W must compensate it for that loss. This term also sets out that Mercedes is not obliged to have the car repaired and, if it doesn't, then Ms W is still liable for the estimated costs of those repairs. So, the lack of any repair invoices doesn't mean Mercedes isn't entitled to charge for the damage.

I appreciate Ms W is upset that despite having had the car re-sprayed these charges still arose, and there has been some confusion as to why Mercedes asked about the re-spray invoice. Looking at what Mercedes has said, I think the invoice was requested to establish whether the car had been repaired between its inspection and the collection, which was not the case. I think the issue of VAT registration wasn't really relevant to the issue and appears to have caused some confusion. However, looking at the evidence, I am satisfied the car had the damage described in the reports when it was collected, and this damage did not fall within the criteria of being fair wear and tear. As set out by our investigator, either the re-spray hadn't repaired the scratches, or the scratches happened after the re-spray but before the car was collected.

I've seen Ms W says that the collection process has changed, but I think this is just because this time damage was found on the car when that hadn't happened previously. I haven't seen anything that would suggest the inspection/collection process didn't follow the usual steps.

Looking at the amount of the charges, I can't reasonably say they are unfair and excessive. They appear to be in line with similar charges that I've seen.

So, although I appreciate my decision will be of disappointment to Ms W, I am not upholding her complaint.

My final decision

For the reasons set out above, I'm not upholding Ms W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 26 March 2021.

Jocelyn Griffith
Ombudsman