

## The complaint

Mrs L complains that Mercedes-Benz Financial services UK Limited trading as Mercedes-Benz Finance (MBFS) didn't assist when she asked for help with her monthly payments due to being impacted by the coronavirus pandemic (Covid-19). Mrs L also complains about the charge to voluntarily terminate her agreement, and about end of contract charges MBFS asked her to pay for damage to the vehicle.

## What happened

In December 2018 Mrs L acquired a used car through a hire purchase agreement with MBFS. The agreement ran for 48 months, so was due to end in December 2022.

In March 2020 Mrs L contacted MBFS to let them know she'd been financially affected by Covid-19, and she asked for a payment holiday.

In April 2020 MBFS let Mrs L know they might be able to offer her a payment holiday and asked her to confirm how long she'd like one for, so that they could give her a quote. Mrs L asked for a quote for a three-month payment holiday.

MBFS say they sent offers of a payment holiday to Mrs L in March and May 2020. These offers set out how the payment holiday would affect Mrs L's payments for the rest of her agreement period and asked her to confirm if she wanted to accept the offer. MBFS say they didn't receive a response to these offers, and so no payment holiday was granted.

Mrs L says she didn't receive any communication from MBFS offering her a payment holiday. She contacted MBFS in January 2021 to let them know she was struggling financially as a result of Covid-19, and so she wanted to hand the car back.

MBFS sent Mrs L information on how to voluntarily terminate the agreement, and said she'd need to pay a shortfall of £6,058.92. Mrs L paid this sum in March 2021, and the vehicle was collected and inspected that month.

Following the inspection, MBFS sent Mrs L an invoice for £900.69 for damage to the vehicle outside of the vehicle return standards.

Mrs L complained to MBFS in March 2021 about the payment holiday never being granted, the invoice for damages and about the shortfall required to voluntarily terminate the agreement.

MBFS provided their final response to Mrs L's complaint in April 2021. They said the damage charged for was outside of the vehicle return standards, so the £900.69 remained payable. They said Mrs L could raise her concerns about her financial difficulties with another department. They didn't address the shortfall calculation or the payment holiday. MBFS didn't uphold Mrs L's complaint.

Unhappy with MBFS's response, Mrs L brought her complaint to this service for investigation. She said MBFS ignored her requests for a payment holiday, she didn't know

how the shortfall amount had been calculated, and she was unhappy with the invoice for damage to the vehicle. Mrs L said she'd like a refund of the shortfall payment and for the invoice for damage to be cancelled.

Our investigator gave her view that the damage recorded when the vehicle was collected was clear, and outside of the vehicle return standards, so it was fair for MBFS to charge for it. She said the agreement was clear in terms of the cost to voluntarily terminate, and the shortfall had been correctly charged by MBFS.

Our investigator said that MBFS had sent emails to Mrs L offering her a payment holiday, but these had been sent to the wrong email address. She didn't think Mrs L had received these, and so MBFS didn't provide support to Mrs L to help her manage her account. Our investigator recommended that MBFS pay Mrs L £300 compensation for the distress and inconvenience caused, but she thought Mrs L was likely to have still chosen to end the agreement early, so she didn't ask them to do anything more.

MBFS accepted our investigator's recommendations.

Mrs L didn't agree. She said if MBFS had given her a payment holiday, she'd have had time to arrange her finances in order to continue making monthly payments. Instead, she was forced to terminate the agreement, and so she'd like the £6,058.92 refunded. Mrs L said the agreement wasn't explained to her, and she didn't know about the charge for early termination, or that the vehicle would be inspected when it was collected.

As an agreement can't be reached, the case has been passed to me for a decision.

### **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.

It seems to me there are three things to consider in respect of Mrs L's complaint:

1. Did MBFS support Mrs L in managing her account when she was financially impacted by Covid-19?
2. Was the charge for voluntary termination fair, and was Mrs L provided with information about this charge in good time?
3. Was the end of contract charge applied by MBFS for damage to the vehicle fair?

### ***Financial difficulties***

Mrs L first asked MBFS for assistance with financial difficulty due to Covid-19 in March 2020. There was no specific guidance relating to Covid-19 at that time, but there were existing forbearance rules and guidance that businesses are expected to follow. These are set out by the Financial Conduct Authority (FCA) in the Consumer Credit sourcebook (CONC), which can be found online. CONC 7.3.4 states, "*A firm must treat customers in default or in arrears difficulties with forbearance and due consideration.*"

The FCA released specific guidance relating to motor finance agreements and Covid-19 in April 2020. That guidance said, '*A firm should grant the customer a payment deferral for 3 months unless the firm determines (acting reasonably) that it is obviously not in the customer's interests to do so.*'

MBFS say they offered Mrs L a payment holiday in March 2020, and again in May 2020. Mrs L said she never received these offers.

I've seen the emails sent by MBFS making the offer of a payment holiday, and I can see they were sent to an incorrect email address. So, I'm satisfied that Mrs L didn't receive them.

As Mrs L didn't receive an offer of a payment holiday when she asked for it, I'm satisfied that MBFS didn't provide the appropriate support to Mrs L to help her manage her account whilst she was in financial difficulty as a result of Covid-19.

Mrs L has said she thinks this was a deliberate attempt by MBFS to limit her access to support, and they had corresponded with her on numerous occasions with the correct email address. I haven't seen any evidence that this was the case. The emails were sent by MBFS in response to the request made by Mrs L. This was an unprecedented time for businesses as well as for consumers, and as a service we've seen many payment holidays granted in similar circumstances. So, I think it's more likely to have been a mistake or human error, rather than an attempt to deliberately avoid setting up a payment holiday for Mrs L.

I've gone on to think about what's most likely to have happened if Mrs L received the offer of a payment holiday from MBFS.

Mrs L has explained that as a company director, her income reduced to nothing during Covid-19, and she was entitled to little support elsewhere. So, I think it's likely that Mrs L would've accepted the first payment holiday offered by MBFS if she'd received it. This would've covered her April, May, and June 2020 payments.

The FCA issued updated guidance to firms in July 2020. That guidance set out that, *'Where, after an initial payment deferral, and at any time before their first payment is due, a customer indicates they remain in temporary payment difficulties and cannot resume full payments immediately, a firm should offer a full or partial payment deferral to reduce payments for a period of 3 months to a level the customer indicates they can afford. If the customer is in temporary payment difficulties but is unable to afford any payments, the firm should offer them a full payment deferral where this is in the customer's interests.'*

Mrs L has explained that she continued to struggle to make her payments, and I think it's likely that she would've asked for, and MBFS would've given, a further three-month payment holiday. This would've covered Mrs L's July, August, and September 2020 payments.

Once a six-month payment holiday had been granted, there was no obligation for firms to offer any additional immediate temporary relief in the form of deferred payments. Mrs L was able to continue to make her payments, albeit with some difficulty. So, I think it's likely that Mrs L would've needed to resume her payments in October 2020 at the latest. These payments would've been higher than her payments before the payment holidays, as the six months she hadn't paid would need to be paid back over the remaining term of the agreement.

Mrs L has explained that she was still in financial difficulty as a result of Covid-19 in January 2021, and that's why she asked to terminate the agreement at that time. I appreciate that Mrs L has said that if she'd had a payment holiday, she would've been able to rearrange her finances and wouldn't have needed to terminate the agreement early. It's difficult to say what would've happened had one or two payment holidays been granted. But, all things considered, I think it's likely that Mrs L would've still opted to terminate her agreement when she did, due to her ongoing financial difficulty at the time.

Our investigator recommended that MBFS pay Mrs L £300 compensation. Mrs L has tried to arrange a payment holiday on a number of occasions and received no response from MBFS. This has added distress and inconvenience to an already difficult time for Mrs L. Overall, I'm satisfied that MBFS should pay Mrs L £300 compensation for the distress and inconvenience caused.

Mrs L said she cancelled her direct debit instruction when she received no response from MBFS, in the hope they would contact her. It's not clear if MBFS have recorded any adverse information on Mrs L's credit file as a result of this. But I don't think Mrs L would've taken this action if MBFS had provided the support it should've, so any adverse information that has been reported should be removed.

### *Voluntary termination*

Mrs L said the charges for ending the agreement early weren't explained to her at the outset, and the amount charged didn't seem to match with the value of the car.

The terms of the agreement set out that Mrs L can end the agreement early, under 'Termination: your rights' It says:

*'You have a right to end this agreement. To do so, you should write to the person you make your payments to. We will then be entitled to the return of the vehicle and to half the total amount payable under this agreement (£23,357.96).'*

When Mrs L asked MBFS to end the agreement early, they confirmed she was entitled to return the vehicle, and explained she could find this information under the 'Termination: your rights' section of the agreement, they set out the amount Mrs L would need to pay in order to do this.

I'm satisfied that this information is clear in the agreement, and that it was provided to Mrs L in good time, prior to her entering the agreement and again when she asked to return the vehicle.

MBFS have charged Mrs L £23,357.96 to end the agreement early, which is half of the amount payable and in line with the termination section of the agreement as set out above. They've deducted £5,000 for the deposit Mrs L paid, and £17,299.04 for the total amount of payments Mrs L had made up to that point. This left a £6,058.92 shortfall for Mrs L to pay. So, I'm satisfied that the charge to voluntarily terminate the agreement was fairly applied.

### *End of contract charge*

The terms of the agreement between Mrs L and MBFS set out that the vehicle must be returned at the end of the agreement in line with the vehicle return standards. It confirms that an inspection will be carried out by trained technicians and goes on to set out the acceptable return standards, beyond which it allows MBFS to charge for the costs of either repairing and / or refurbishing the vehicle, or the cost of the consequent reduction in the sale value of the vehicle.

It's clear from the agreement that Mrs L was responsible for returning the car in good condition.

I've considered whether the charges applied by MBFS are fair and reasonable. Along with the vehicle return standards set out in the agreement, there are industry standard guidelines published by the British Vehicle Rental and Leasing Association (BVRLA) which

set out what is considered to be fair wear and tear in respect of a hired vehicle. So, I have also considered these in deciding what it's fair for MBFS to charge on return of the car.

The damage that MBFS said was outside of fair wear and tear, and therefore payable by Mrs L, was as follows:

Left hand front wheel – rim damaged over 50mm - £110  
Right hand rear wheel – rim damaged over 50mm - £110  
Left hand front tyre – outer tread 1mm - £210.69  
Front bumper - scratched over 50mm - £210  
Rear bumper – dented 50-100mm - £260

The hire agreement sets out in the vehicle return standards that minor scuffing or damage under 25mm to the vehicle alloy or steel rim edge or wheel face is acceptable. The BVRLA fair wear and tear standards say that scuffs up to 50mm on the total circumference of the alloy wheel is acceptable.

I've seen the photos provided by MBFS of the wheels, and I'm satisfied that they show scuffs over 50mm to the rim on both the left front and right rear wheels. So, I'm satisfied that the charge of £220 for these items has been fairly applied.

The hire agreement sets out in the vehicle return standards that less than 1.6mm tread depth across 75% of the tyre is not acceptable. The BVRLA fair wear and tear standards say that all tyres must meet minimum UK legal requirements. The UK legal limit for minimum depth of the tread on tyres is 1.6mm, across the central three quarters of the tread around the complete circumference of the tyre.

I've seen the photo provided by MBFS of the tyre, and I'm satisfied that it shows the left front tyre is under the minimum legal requirement. So, I'm satisfied that the charge of £210.69 has been fairly applied.

The hire agreement sets out in the vehicle return standards that light surface scratches not through the top coat which can be removed by polishing / touching up are acceptable. The BVRLA fair wear and tear standards say that surface scratches of 25mm or less where the primer or bare metal is not showing are acceptable, provided they can be polished out.

I've seen the photo provided by MBFS of the front bumper, and I'm satisfied that it shows a scratch over 25mm where the primer is showing. So, I'm satisfied that the charge of £210 has been fairly applied.

The hire agreement sets out in the vehicle return standards that minor body dents under 13mm in diameter are acceptable. The BVRLA fair wear and tear standards say that dents of less than 15mm in diameter are acceptable.

I've seen the photos provided by MBFS for the rear bumper, and I'm satisfied they show a dent over 15mm. So, I'm satisfied that the charge for £260 has been fairly applied. Overall, I'm satisfied that MBFS have fairly applied the end of contract charges for damage to the vehicle.

### **Putting things right**

I've considered the three points of Mrs L complaint. I don't think MBFS need to do anything more in respect of the voluntary termination, or the end of contract charge. But, I think it needs to do more in respect of the financial difficulties and pay Mrs L £300 compensation for

the distress and inconvenience caused, along with removing any adverse information from Mrs L's credit file, for the reasons I've set out above.

### **My final decision**

My final decision is that I uphold this complaint and I require Mercedes-Benz Financial services UK Limited trading as Mercedes-Benz Finance to:

- Pay Mrs L £300 compensation for the distress and inconvenience caused.
- Remove any adverse information from Mrs L's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 6 June 2022.

Zoe Merriman  
**Ombudsman**