

## **The complaint**

Mr C complains that Mercedes-Benz Financial Services UK Limited (MBFS) charged him for additional usage after the term of his car finance agreement had come to an end.

## **What happened**

Mr C had a hire purchase agreement for a car which ended on 31 May 2019. On 30 May Mr C and MBFS agreed to a 30-day extension while he decided if he wished to keep the car. He agreed to pay an additional monthly sum. I gather that due to a misunderstanding he didn't complete the paperwork for this extension. In any event he subsequently concluded that he wanted to return the car.

MBFS says it contacted its agent B to arrange for collection of the car. B says it called Mr C on 1 and 3 July to arrange collection but he didn't answer. He called back on 3 July and asked for an afternoon slot. B was unable to agree to this request and said it couldn't guarantee the time of day. It said if it called and he or another adult wasn't available he would be charged a fee. B advised Mr C that he could deliver the car to a local dealer, but he didn't wish to use that avenue. Mr C said he would take it up with MBFS. It says that he next called on 15 July and another company was engaged to make the collection which took place on 19 July. Mr C says that he made several attempts to call before 15<sup>th</sup>.

MBFS charged Mr C for the extended use and rejected his complaint so he brought the matter to this service. It also charged him £85 for damage to an alloy. The complaint was considered by one of our investigators who considered it should be upheld. He listened to the call to B on 3 July and noted the earliest that B could collect the car was 9 July.

Our investigator established that Mr C had, by this time acquired another car. He concluded that Mr C had made a reasonable attempt to arrange for the car to be collected and he said that MBFS should limit the charge for excess usage to the month ending on 31 May. He agreed that the charge of £85 for the damaged alloy was fair.

MBFS didn't agree and said it was Mr C's responsibility to ensure the car was returned. It also noted that his delays in making contact had contributed to the delay.

I issued a provisional decision as follows:

I reviewed the agreement and I could see that Mr C was obliged to return the vehicle to MBFS at his own risk and cost and at such address as it may reasonably specify. That said, MBFS provided a collection service which Mr C chose to use.

I noted Mr C wasn't obliged to use this service and it was open to him to return the car to his local dealer. He chose not to take that option. He was entitled to do so, but I thought he must bear some responsibility for the delay beyond the initial month's extension.

I noted in his complaint he had said the delay lay with B, but I wasn't persuaded this was wholly accurate. According to MBFS Mr C notified it on 30 May that he wanted to extend the agreement by a month. It was only on 28 June, a Friday, in response to call from MBFS that

Mr C said he wanted to return the car. This didn't leave much time for collection to be arranged before the end of June.

I said B called Mr C on the following Tuesday, 3 July, having been notified by MBFS the previous day and was offered a collection date of 9 July. That contributed to some of the delay, but Mr C gave little notice in order to allow B to arrange collection.

I explained I had listened to the call between B and Mr C and he ended it by saying he would sort something out with his contact at MBFS. However, its records show that he didn't call and MBFS called him on 15 July and at that point it arranged for another agent to collect the car and this took place on 19 July.

I didn't believe Mr C showed any urgency in arranging for the car to be collected and while B's inability to offer an afternoon slot may have been an inconvenience it was open to Mr C to return the car to local dealer. I said the onus was on Mr C to return the car and while he may not have made use of it he deprived MBFS of access to its asset. I couldn't see that MBFS has done anything wrong in its handling of the matter and so I didn't consider the complaint should be upheld.

Mr C didn't agree and set out his reasons in some detail. The following is a brief summary of the reasons.

Mr C said that he was the one to initiate the original contact and he did so in April 2019. He said that the extension by one month to 30 June resulted from a mistake by MBFS. He said B called a couple of times, on 1 and 2 July and then again on 3 July. Mr C said that B used a number withheld system and so he didn't pick up the calls. B left a message on the third occasion. He also implied that B had left a message on the second call too. However, it was after the third call that he listened to the message and called back on 3 July. He said the extended agreement ended on 30 June and the first opportunity he had to speak to B was 3 July. He had not sought to delay the return of the car.

He also suggested that he had made a number of calls to MBFS after 9 July, but he didn't have the records to confirm this but hoped to be able to obtain these. He also questioned the claim that the call on 15 July was initiated by MBFS.

He said my provisional decision insinuated that he had held on to the car until a replacement had arrived. He explained that he had acquired the other car in January 2016. He explained that he had made little use of the car from MBFS in June.

He also referred to an email he had sent this service setting out the chronology of events. He said this showed that MBFS had admitted that as of 5 July that B was facing logistical challenges due to the pandemic and that it had not been in contact with him until 15<sup>th</sup>. That said, he maintained it was he who had made the call on 15<sup>th</sup>.

He maintained that the delays lay with MBFS and B as it had not contacted him after 5 July until the conversation of 15<sup>th</sup>. It had not advised him to revert to B or to take it to a dealer and it had appointed another agent which had been more efficient than B. He argued that MBFS was aware of the issue on 5 July and should have acted sooner. He said he was ready to return the car whenever MBFS arranged for collection.

He said that in his experience MBFS collected cars at the end of the finance agreement. He said that it would be wrong for MBFS to profit from the delay and he shouldn't be expected to bear the risk due to a lack of action by others.

He said the agreement didn't specify that he had to return the vehicle save for cases of early

termination. It simply required that he make the vehicle available for collection and he met this requirement by offering a window of 10 hours each day seven days a week.

He said the statement that he had notified MBFS on 30 May that he wished to extend the agreement was incorrect. It arose as a result of MBFS failing to contact him in good time regarding the end of the agreement. He said that he had the period up to 30 June in which to decide what he wished to do and MBFS was not entitled to collect the car before then. He considered the onus was on MBFS to arrange for collection of its asset.

I was persuaded by Mr C's arguments and issued a second provisional decision

I explained that the acquisition of another car was not viewed as undermining Mr C's case. It was simply noted by the investigator and by me that he had little or no need of the car and so had no reason to delay its return.

I said it may be useful to refer to the relevant paragraph in the agreement which Mr M signed. Paragraph 11 covers the option to purchase and it contains the following if the option is not exercised by the end of the term: *"...then 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"*.

It seemed clear to me that the agreement placed the onus on the customer to return the car. However, I recognised MBFS has its own collection procedures which belied the contract, to a degree at least. I believed custom and practice showed that it wasn't a simple matter of the customer returning the car, but MBFS had its own process which take much of the onus away from the customer. However, their co-operation in returning it is a key element of a functioning returns process.

I looked at MBFS's returns process and I saw that it indicated that B will be in touch to arrange collection. In my previous provisional decision I took the view that there was a degree of responsibility on Mr C to let MBFS know what his intentions were. However, I said I hadn't seen a requirement for him to do so before the end of the contract. He did notify MBFS on 28 June of his intentions to return the car and I thought that in so doing he satisfied the requirements of the agreement.

I had some concerns about his claim that the car was available for collection 10 hours a day and seven days a week to suit B. It offered him 9<sup>th</sup> which he rejected and then 10<sup>th</sup> wasn't convenient unless a specific window could be agreed. So, I wasn't persuaded that he was as amenable as he had suggested.

Although, as Mr C has said the issue of the one-month extension is not material to the subject of the complaint I was happy to acknowledge that this extension arose due to a failure by MBFS.

He has said that he sought to make contact with MBFS after 5<sup>th</sup> and he was successful in doing so on 15<sup>th</sup> at which point another company arranged collection without delay. I noted Mr C's suggestion that this indicated the second company had a greater degree of flexibility.

In summary, I was satisfied that Mr C took reasonable steps to have the car collected and had no benefit in holding on to it. Nor did I consider MBFS suffered any financial loss as a result of the short delay so I concluded that the complaint should be upheld.

### **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.

Mr C accepted my provisional decision and MBFS said it would consider the matter and provide a response shortly. It has not done so. It chased Mr C for the debt using a debt collection agency, but Mr C has told this service that it has since apologised and said the complaint has been upheld. I am satisfied that my second provisional decision is fair and reasonable and should stand.

### **Putting things right**

MBFS should remove any charges for additional use.

### **My final decision**

My final decision is that I uphold this complaint and I direct Mercedes-Benz Financial Services UK Limited to forgo any charges for additional use.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 March 2022.

Ivor Graham  
**Ombudsman**