

The complaint

Ms S complains about the end of contract charges applied by Mercedes-Benz Financial Services UK Limited (MBFS) when her car finance agreement came to an end.

What happened

In April 2017, Ms S entered into a 36 month personal contract purchase agreement (PCP) for a used car. The cash price was £16,901 and it had travelled over 31,500 miles. She paid a deposit of £1,600 and was required to pay £249 per month.

The agreement was due to end on 30 April 2020. However due to the impact of the Covid-19 pandemic, MBFS' collections were temporarily suspended. MBFS offered to extend the agreement by three months on the same terms as the agreement. On 27 April 2020, Ms S contacted MBFS and said she didn't want the extension. She said she was told that as long as the car was insured and taxed, she could continue to use the car until it was collected.

As restrictions started to ease, in July 2020 MBFS said their collections had resumed and provided contact details for Ms S to arrange it. Ms S contacted MBFS and requested to extend the agreement while she searched for another car, a quotation was provided. MBFS said the extension would be for three months from 30 April 2020 and she would be required to pay £148 per month. As this meant Ms S would only have use of the car for a couple more weeks, she complained. She believed the extension should've started from the date of her request, not the date the agreement ended.

On 19 August 2020 MBFS issued their response to the complaint and said in April 2020 they told Ms S if she intended to return the car they wouldn't charge her for the monthly instalments providing she didn't continue to use it. However in July 2020, she requested an extension and because she had continued to use the car they had to take this into account. They said if she wanted to accept the extension, she should let them know, if not, the car would be collected.

In September 2020, Ms S told them she was unhappy with their response. On that basis, MBFS told Ms S that they would refer it to their collection agents. At the start of October 2020, they sent further confirmation that they had passed on the details to their agents for the car to be collected.

Unhappy with their response, Ms S referred the complaint to our service. While the complaint was waiting to be looked into, the car was collected on 20 October 2020. It was later inspected on 26 October 2020. Shortly thereafter, MBFS sent an invoice and said Ms S had to pay £3,117 for end of contract charges. It was broken down as follows:

- Extra days hire - £1,427 (172 days overdue from 30 April 2020)
- Damage - £440 (four wheels at £110 each)
- Excess mileage - £803 (excess of 13,396 miles)

Ms S complained about the above. MBFS said they had followed the terms of the agreement and acted fairly when applying these end of contract charges.

Having listened to the call from April 2020 and following some back and forth between MBFS and the investigator, MBFS agreed their advisor had given Ms S incorrect information. They accepted she was told she could use the car up until it was collected and there would be no charge. They agreed to remove the charge for extra days hire from 30 April 2020 (end of the agreement) to 19 August 2020 (the date of their final response). This meant they would remove 111 days of extra days hire and she would be charged for 61 days instead.

Our investigator agreed to review both complaints under this reference. Based on April's call, she felt there had been a failing due to the incorrect information given and she believed MBFS' above offer was fair. In regards to the excess mileage, damage charges and extra days hire after 19 August 2020, she concluded it was fair for MBFS to charge for this.

Ms S disagreed, she maintained her position. She also said:

- MBFS failed to consider the call in April 2020 despite her asking them to do so;
- MBFS hadn't passed her details to their agent and this caused delays for the car to be collected so it was unfair she was being charged for the extra days hire;
- The extra days hire charge was different to that offered under their offer to extend the agreement;
- She identifies as a vulnerable consumer and this situation has caused her stress and upset.

In February 2022, I issued a provisional decision partially upholding the complaint, I said:

"Extra days hire

I've listened to the relevant call in April 2020 and I agree with the findings of the investigator so I won't repeat them again here. MBFS has already agreed to remove the extra days hire between 30 April and 19 August 2020 and I believe this is fair in the circumstances.

So what is left for me to consider is whether it's fair for MBFS to charge for the extra days hire from 20 August to 20 October 2020 (when the car was collected). Having done so, I don't believe it's fair for them to do so. I agree with Ms S that there were delays to collect the car and this was because MBFS hadn't referred the details to their collection agents.

In MBFS' final response in August 2020, they said if she didn't accept the extension they would arrange for the car to be collected. I've seen a copy of an email dated 1 September 2020 where Ms S said she wasn't happy, she didn't want the extension and the car could be collected. On this basis, I'm satisfied it was clear that the car needed to be collected. On 4 September 2020, MBFS confirmed this would happen so I can understand why Ms S was of the impression the collection agent would be in contact with her in due course. However based on MBFS' system notes, this wasn't referred to their collection agents until 6 October 2020. At that point, MBFS said their agents would contact her within the next five days to arrange collection. It's clear there was a four week delay and the reason for this is unclear but I don't find it was the fault of Ms S. She said she stopped using the car and during a call to MBFS on 13 July 2020, she confirmed the same so I'm satisfied she did so.

From the time the case was referred to the collection agent on 6 October 2020, the car was collected within a few weeks (20 October 2020). This would suggest had the details been passed to their agents in September 2020 when MBFS said it would, the car would've been collected sooner. I know MBFS has already agreed to remove some of the extra days hire however in light of the above, I believe they should remove this charge entirely.

Excess mileage

The agreement allowed Ms S to travel 8,000 miles per year meaning a total of 24,000 miles. In the event the maximum mileage is exceeded, it said MBFS will charge six pence per mile. In this case when supplied, the car had covered 31,500 miles and when it was returned it had covered over 68,800 miles.

At the time of the call in April 2020, Ms S indicated she had exceeded the mileage and she accepted there would be a charge. It's not clear how much the mileage had exceeded at the time of the call. However based on the incorrect information given about the use of the car, she doesn't believe it's fair for MBFS to charge £803 for excess mileage. Although I accept the advisor gave incorrect information, he did say it would be subject to excess mileage and this part was correct. So I'm satisfied Ms S knew there would be a charge for this.

Given Ms S had use of the car and exceeded the permitted miles by over 13,300, I find MBFS were entitled to apply the charge for excess mileage. Having seen the invoice, the applicable charge of six pence per mile has been correctly applied so I can't say MBFS have acted unfairly in this respect.

Damage

The agreement outlined that in the event the car is returned in a condition that doesn't meet their vehicle standards, MBFS would apply a charge. The agreement also outlined what damage would be considered acceptable. Ms S signed this agreement in April 2017 so I'm satisfied she was aware of the same.

In this case, MBFS said damage was found to all four wheels, meaning Ms S must pay £440 (£110 each). I've reviewed MBFS' return standards and I've also taken into account guidance published by the British Vehicle Rental and Leasing Association (BVRLA). This is industry guidance which sets out what is considered fair wear and tear when cars are returned at the end of their agreements. However I must bear in mind this guidance is primarily for cars that were new when supplied. Nevertheless, I think it's fair to take this guidance into account as it's still relevant about what is considered fair wear and tear.

Unfortunately I haven't been provided with any evidence about the condition of the car when it was supplied to Ms S in April 2017. But given the car was around three years old and covered over 31,500 miles, I believe it's fair to say it's most likely some wear and tear would've been present.

MBFS return standards say scuffs up to 25mm are acceptable, the BVRLA guidance says up to 50mm. Having reviewed the photographs of the reported damage, I can see there are significant scuff marks found on all four wheels which based on MBFS' standards and the BVRLA wouldn't be considered acceptable. Therefore, I'm satisfied this damage is beyond fair wear and tear even given the car's age and mileage so MBFS were entitled to charge for this.

Summary

Taking everything into account, I don't believe MBFS has acted fairly. Ms S was given incorrect information about the use of the car when the agreement came to an end. I also believe MBFS caused an approximate four week delay for the car to be collected. In the circumstances, I believe the charge for extra days hire should be removed completely. However in terms of the excess mileage and damage charges, I find this have been fairly charged by MBFS.

I've carefully considered Ms S' comments and I'm sorry to hear how this situation has impacted her. From the outset, she said the call from April 2020 was important and I find she was right about this. Had MBFS listened to it earlier, I believe this would've alleviated some

of her concerns. MBFS said she needed to pay over £3,000 in end of contract charges which is a significant amount so I can understand her worries about it and receiving subsequent demand letters. Ms S said at the time she was a single parent of a newborn and was a carer for her mother and this situation caused additional distress. I'm sorry to hear this was a difficult time for her. Taking everything into account, I believe MBFS should also pay £150 compensation for the trouble and upset caused.

Having reached this decision, I strongly encourage Ms S to contact MBFS to discuss a suitable way of paying the outstanding balance. I wish to remind MBFS of the expectation that they treat her with forbearance and due consideration in the event she is experiencing financial difficulty”.

Response to the provisional decision

Both parties were invited to respond to the provisional decision. MBFS accepted the findings. Given what had happened, Ms S said she didn't believe the £150 compensation was enough. In summary she said from the outset she stressed the call in April 2020 was key and she didn't believe MBFS had looked into her concerns sufficiently so she had no alternative but to refer it to our service. She explained the impact this complaint has had on her life including her worry that she may have to declare herself bankrupt due to the situation. She believes the charge for excess mile should be reduced as she was told she could continue using the car, she had to insure and store it at her own expense.

Ms S also provided evidence of recent demand letters still asking for the original outstanding balance from a third party debt collection company that MBFS had instructed. She believes this debt should return to MBFS and she said she is willing to work with them to pay what is owed. Lastly Ms S said she's happy for the compensation amount to be credited to the account in order to reduce the balance.

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 thank Ms S for her further comments and I recognise her disappointment about the amount of compensation. However having carefully considered the trouble and upset caused and the impact of this complaint, I remain of the belief £150 is reasonable in the circumstances.

In regard to the excess mileage charge, I have already addressed this in my provisional decision, I believe MBFS are entitled to charge this. Even when the advisor provided incorrect information about the use of the car, he did say it would be subject to excess mileage and this part was correct. Having listened to the call, Ms S accepted this and stated she had already exceeded the mileage. Overall, given Ms S had use of the car and she exceeded the permitted miles by over 13,300, it's fair she pays for this.

In the event Ms S decides to accept this final decision, MBFS will remove the extra days hire meaning the outstanding balance will be revised. Whether MBFS will manage the outstanding debt themselves or refer it to one of their agents (a debt collection company), is a matter for them to decide. In the event they choose the latter, this isn't unreasonable. However as mentioned in my provisional decision, no matter who is managing the debt, I expect them to do so with forbearance and due consideration given Ms S' financial circumstances. This may involve setting up a suitable plan based on what she can afford.

Overall, I still consider my findings to be fair and reasonable in the circumstances. Therefore, my final decision is the same for the reasons as set out in my provisional decision.

My final decision

For the reasons set out above, I've decided to uphold Ms S' complaint.

To put things right, Mercedes-Benz Financial Services UK Limited should:

- Remove the charge for extra days hire;
- Remove any adverse information from Ms S' credit file from April 2020 onwards (the date the agreement ended);
- Pay £150 compensation to Ms S for the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 11 April 2022.

Simona Charles
Ombudsman