

## The complaint

Mr G complains about charges for damage applied when he returned his car at the end of a hire purchase agreement provided by Mercedes-Benz Financial Services UK Limited ("MBFS").

## What happened

In March 2017, Mr G entered into a three year hire purchase agreement to acquire a used car. At the point Mr G acquired the car, it was around six months old and had travelled around 2,200 miles. The agreement reached maturity in March 2020. But due to restrictions imposed as a result of COVID-19, the car wasn't collected until 1 June 2020. The car was collected by MBFS' agents – who I'll refer to as B.

Mr G complains that after the car was collected by B, he received a report from MBFS charging him for damage to the car and a missing book.

B issued a report on the condition of Mr G's car after it collected it. It said the following damage was outside of fair wear and tear:

1. Literature pack – missing – needs replacing
2. Tyre right hand front inner tread – too low – needs replacing
3. Left hand front door – scratched greater than 25mm through top coat and requires refinish
4. Left hand front door aperture seal – torn – needs replacing
5. Left hand door mirror - scratched greater than 25mm through top coat and requires refinish
6. Right hand front door - scratched greater than 25mm through top coat and requires replacement
7. Right hand front door aperture seal – torn – needs replacing

In total Mr G was charged £701.02. Mr G made a complaint to MBFS. He said:

- He placed the literature pack in an area of the car when the car when it was purchased
- The tyres were road legal when the car left his property and the car had a valid MOT
- The damage to the body work and door mirror housing was within the agreed tolerance at the point of collection and he had pictures to show this. And he'd had the car valeted and polished.
- He had been advised that both door seals were of a poor quality material and he'd never noted any damage to the seals
- He said MBFS should pay him for storing the car on his property for around two months
- Industry guidelines stated MBFS needed to highlight any apparent damage at the point it was collected. But this didn't happen and instead the inspection was carried out after the car was collected.

In September 2020, MBFS issued its final response to the complaint. It said the charges had been applied correctly in line with MBFS' vehicle return standards ("VRS"). It said no damage had been caused in transit. Unhappy with this, Mr G referred his complaint to our service.

Our investigator looked into Mr G's complaint and thought the charges were applied fairly in line with MBFS' VRS and the industry standard – the British Vehicle Rental & Leasing Association's ("BVRLA") fair wear and tear guidelines. He said he didn't think MBFS needed to pay Mr G for storing the car whilst it was unable to collect it.

Mr G was unhappy with this and said he was unhappy he had to store the car for MBFS on his property after the finance agreement had ended. He sent in some photos of the car. He said the car needed work to the brake light and had issues idling. And he also said he was being held responsible for damage to a car which legally wasn't his responsibility.

Our investigator said this information didn't change their opinion.

As Mr G remains unhappy, the case has been passed to me to decide.

### **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've read and considered the whole file and acknowledge that Mr G has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When reaching my decision, I'm required to consider relevant industry guidance. Here, relevant industry guidance includes the guidelines on fair wear and tear published by the trade body, the BVRLA. This guidance is generally intended for the return of new cars and the end of the first leasing cycle. MBFS aren't members of the BVRLA, but I've considered the BVRLA guidelines alongside MBFS' VRS.

The VRS are set out in Mr G's hire purchase agreement and these explain the standards that MBFS expected this car to meet on return. When Mr G acquired his car under the hire purchase agreement, he agreed to return the car in line with the standards set out in the VRS. And he agreed that MBFS would be entitled to charge him for costs of repairs and/or refurbishing the car, or the cost of the consequent reduction in the sale value, as compensation.

The car was just over three years old at the point of inspection and it had covered around 32,500 miles. So while I'll take into consideration the BVRLA guidance and MBFS' VRS, I'll also think about what's fair and reasonable for a car of this age and mileage.

#### *Ownership of the car*

Mr G has queried who is legally responsible for the car. The car is the property of MBFS. This is confirmed in the hire purchase agreement which Mr G signed. This states, "*You understand that the vehicle remains our property during the period of the agreed monthly payments*". The car would only become the property of Mr G if he repaid all the total amount payable under the agreement in full.

I appreciate Mr G has said the condition of the car on 1 June 2020 is MBFS' responsibility as the finance agreement had ended. But Mr G agreed to keep the car until MBFS could collect it. And whilst he was in possession of the car, he also agreed to, "*keep the vehicle in good repair and condition at all times*". This means Mr G was responsible for the condition of the car until it was collected.

I turn to the level of insurance MBFS provided for the two months after Mr G's agreement ended. Mr G mentioned the car could have been stolen and said he would have been liable for the cost of the car if this had happened. However, I can't consider a hypothetical scenario and because this didn't happen, Mr G didn't have any loss in this respect.

### *Tyre*

Mr G says the tyres were road legal at the time the inspection was carried out as the car had passed an MOT.

In relation to tyres, the VRS say the following is acceptable:

*"Minimum remaining tread of 1.6mm across 75% of the tyre in line with current legislation"*

And the following is not acceptable:

*"Less than 1.6mm tread depth across 75% of the tyre including spare".*

The BVRLA says for tyres:

*"All tyres, including any spare, must meet minimum UK legal requirements and comply with the vehicle manufacturer's recommendations of tyre type, class\*, size and speed rating for the vehicle.*

*There must be no damage to sidewalls or tread."*

I've reviewed public available records and can see the car passed an MOT on 3 October 2019. At this point, the mileage was recorded at 28,822 miles. But, at the time the car was collected, the car had travelled around an additional 4,000 miles. So whilst the tyre may have been road worthy at the time the MOT was carried out, the additional mileage travelled since the MOT would have contributed to the tyre becoming worn over time.

B's report provides a picture which shows the right hand front tyre tread is uneven and worn. And the tread depth was recorded as 1.5mm when the car was inspected.

In light of this, I think it's likely the tyre didn't meet the requirements set out by the VRS and BVRLA, so this falls outside of fair wear and tear. It follows that I think MBFS are entitled to charge for the replacement tyre.

### *Scratches*

B's condition report identified scratches over 25mm which penetrated the surface on both the doors and the left hand mirror.

In relation to scratches to the body of the car and paint, the VRS say the following is acceptable:

*"light surface scratches not through the top coat which can be removed by polishing/touching up".*

They say the following isn't acceptable:

*"Any chipping and scratching of paintwork that has penetrated the base coat and/or has caused corrosion of any kind which cannot be polished out".*

The BVRLA says for scratches to bumpers and the body and paint of a car:

*“Surface scratches of 25mm or less where the primer or bare metal is not showing are acceptable provided they can be polished out. A maximum of four surface scratches on one panel is acceptable”.*

I've looked at the photos provided for all three scratches. The scratch to the front left hand door mirror is over 25mm and a ruler has been used to measure this. The primer is also showing.

The photos which show the scratches to the right hand front door, show a scratch down the side of the door measuring around 100mm and a scratch at the bottom of the panel which measures around 50mm. Having reviewed the photos, I think the scratches affect the overall appearance of the car.

The photo provided for the left hand front door shows a scratch down the side of the door, which is in a similar position to the scratch on the right hand front door. This measures around 50mm and a ruler has been used to measure this. The scratch penetrates the primer of the body and paint of the car in some parts.

Overall, as all the scratches fall outside what is considered fair wear and tear under both the VRS and the BVRLA guidance, I think it's fair for MBFS to charge for all three areas of damage B identified.

Mr G has provided pictures which he says are taken whilst the car was in his possession. But the pictures are taken of the outside of the car, from a distance. I agree I can't see all the damage listed by B in its report from these pictures. But Mr G hasn't provided close enough pictures of the areas where damage was identified, to show the damage wasn't present at the time the car was collected.

I've very carefully thought about everything here. But, I haven't seen enough to make me think the damage identified by B wasn't present when the car was collected. And I think it's more likely this damage happened in the three years Mr G had the car, rather than in between the few days B had it after the collection and the inspection. So, this doesn't change my opinion.

### **Seals**

B's condition report identified that both right hand and left hand front door aperture seals were torn.

In relation to the interior of the car, the VRS say the following is acceptable:

*“Normal wear and tear to carpets, trim, upholstery, etc.”*

And the following is not acceptable:

*“Broken or damaged interior mouldings, trim pads, instrument panel, sun visor or headlining, etc.”*

The BVRLA says:

*“Scratches on treads, sills and seals that reflect normal use are acceptable.*

*Torn or split floor coverings and damaged surrounding trim panels are not acceptable”*

I've looked at the photos provided for both door seals. I can see both of them are torn. As this falls outside what is considered fair wear and tear under both the VRS and the BVRLA guidance, I think it's fair for MBFS to charge for the cost of replacing both door seals.

Mr G has said he was told the seals were of poor quality. However, he hasn't provided any supplementary information to confirm this about the seals. And given the car had travelled around 32,500 miles at the time it was returned, I haven't seen enough to make me think it's likely this was the reason for the damage.

### *Literature pack*

There's no dispute that the literature pack was due to be returned with the vehicle. Mr G says he left it in the car and B said he didn't. So I've thought about what I think is most likely to have happened on a balance of probabilities.

The condition report has listed the literature pack as missing and not available. But it confirms the V5 registration document ("V5") is available. It also reports the MOT certificate is missing and the digital service record is to be confirmed. However, these are both available electronically, so weren't required to be returned in a physical format, unlike the literature pack.

Given that B was required to check if the literature pack was available as part of the condition report, and if so retain it, I think it's likely the literature pack wasn't in the car. As B has listed the V5 as being present, I see no reason why it would have missed the literature pack if it was present in the car.

Overall I think it's fair and reasonable for MBFS to charge for the missing the literature pack as I don't think on balance, it was provided to B at the time it carried out the inspection.

### *Collection of the car*

The country went into lockdown around 20 March 2020. The government set out restrictions on what activities a business could and couldn't carry out. In this case, B was closed between March 2020 and June 2020, as a result of the restrictions set out by the government due to COVID-19.

I've thought about whether MBFS did anything wrong when it arranged collection of the car on 1 June 2020, rather than 30 March 2020. Having done so, I don't think it did. This is because MBFS arranged collection of Mr G's car on the first day B reopened. This is the earliest it could have arranged collection. Given that it didn't appear to have any other choice but to wait until B had reopened, I don't think it did anything wrong when it delayed collection of the car.

It should also be remembered that businesses were still trying to adjust to new and different ways of working, due to the unprecedented nature of COVID-19. Mr G says that B didn't carry out an inspection when the car was collected as per the BVRLA guidelines. Whilst I appreciate it would be reasonable to expect it to carry out an inspection under normal circumstances, it was the first day B had started to operate again, and it was still adjusting to new ways of working. So I don't think it did anything wrong here.

I now turn to consider whether I think Mr G has suffered any loss by storing the car for an additional two months. Mr G has said storing the car in his garage caused a passing inconvenience to himself and others. However, this is to be reasonably expected given that MBFS couldn't pick up the car as it was following government guidelines at the time. I also appreciate Mr G said he pays council tax for his house where the car was parked. However, he would have paid this cost anyway, regardless of whether the car had been collected or not. So Mr G hasn't had a loss here for which I think MBFS are responsible for.

I've thought about everything else Mr G has said in relation to the complaint and considered all of the evidence available. But, this doesn't change my opinion.

**My final decision**

I don't uphold Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 13 April 2022.

Sonia Ahmed  
**Ombudsman**