

The complaint

Mr R acquired a car in May 2018, by means of a hire agreement with Mercedes-Benz Financial Services UK Limited trading as Mercedes Benz Financial Services (MBFS). The agreement ended in July 2021, and his car was inspected and collected from his home by MBFS's agent. The agent did not identify any chargeable damage during this home inspection.

Mr R complains about damage charges made by MBFS, after his car was inspected again one day later at the agent's premises. He wants these charges to be withdrawn.

What happened

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 10 February 2022, as follows.

Background

Mr R complained to MBFS, saying:

- His car's home inspection was undertaken by both MBFS's agent and himself (with a close relative) – no damage exceeding normal wear and tear, and thereby chargeable, was found
- A video recording of the home inspection, which could be used as evidence, was made by the agent and provided to him
- He thought it was unfair to identify damage in a situation where he could not challenge this identification, particularly when no damage was identified in a situation on the previous day when he could have challenged
- He also thought that MBFS were making unreasonable charges, at a time when it was benefitting from the general increase in value of used cars
- At the second inspection, if his car did have chargeable damage, this must have been inflicted after it was collected from his home

MBFS responded saying:

- Mr R had been given, in advance, information about its inspection and collection procedure, which was correctly followed by its agent –
 - all damage had been identified, and charges had been made, in accordance with its vehicle return standards
 - if damage was restored, he was liable for the actual costs of doing so
 - if damage was not restored, he was liable for the estimated costs of doing so
- Mr R had also been given his collection report, where no damage in transit was noted
- Mr R had received as well visual evidence of damage identified during the second inspection – each piece of damage had failed to meet the relevant repair standard
- It was unable to uphold Mr R's complaint

Mr R then referred his complaint to us. He also provided to us a copy of the home inspection video.

Our investigator thought the complaint should be upheld in part:

- He felt the home inspection video did not show with sufficient clarity the extent of damage to Mr R's car – but the photographic evidence provided to Mr R by MBFS was sufficiently clear
- He also felt it was more likely that the car had been damaged during the 38 months of Mr R's hire agreement, when it had travelled a little under 31,000 miles, than during the very short period while it was being collected at the end of Mr R's agreement and inspected again
- He felt as well that the three items of damage were all outside the acceptable limits of wear and tear, and that the charges made for two of these items (£140 in total) were fair and reasonable
- But he felt the charge for the third item was too high and should be reduced

Our investigator noted that MBFS had charged (just over £770) for complete replacement of the third item, which had some cosmetic damage but was otherwise in full working order. He felt the item would not have been replaced if the car was sold at auction, but the damage would reduce its likely value by £250.

On this basis, our investigator recommended that the total damage charge should be reduced to £390 (£140 + £250).

Mr R disagreed with our investigator. He accepted charges of £140 for the first two items, but he maintained that the third item was not damaged when his car was inspected at his home and then collected. He argued it was most likely that the second inspection had been undertaken in a busy and congested environment, where his car could easily have been damaged.

MBFS agreed with our investigator that the complaint should be upheld in part. But it disagreed with his recommendation that the third damage item charge should be reduced to £250. It told us that the actual restoration cost for this item was just over £680, and it said the charge should be reduced to this figure, and not to £250.

So, this complaint was referred for review by an ombudsman.

My provisional findings

Where evidence is incomplete, inconsistent or contradictory (as some of it is here), I reach my provisional decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

On the one hand, Mr R asserts that damage to an item, for which MBFS has charged him just over £770, was not present when his car was home inspected and collected. He adds it was most likely that the second inspection was undertaken in a busy and congested environment, where his car could easily have been damaged.

But Mr R accepts charges of £140 for two other damage items.

On the other hand, our investigator does not consider the home inspection video to be useable evidence, although he accepts the photographic evidence of damage beyond normal wear and tear. He also argues it was more likely that the car had been damaged during the 38 months of Mr R's hire agreement, when it had travelled a little under 31,000 miles, than during the very short period while it was being collected at the end of Mr R's agreement and inspected again.

But our investigator further argues that the charge of just over £770 for one item is too high, and that £250 would be fair or reasonable – because £250 better reflects the car's likely loss of value of at auction, caused by the damage. While MBFS tells us that the cost of restoring this item was just over £680, and it argues that the charge should be reduced to this figure.

Having reviewed the available evidence, I share our investigator's view about the home inspection video and the photographic evidence. And the agent's second inspection report lists the damage items. So, I find that Mr R's car was damaged at the time of its second inspection.

The agent's home inspection report describes various aspects of the car's condition, but it is silent about damage – it neither lists, nor does it confirm the absence of, damage. I also share our investigator's view that damage was more likely to have occurred before the home inspection than afterwards.

So, on balance, I am unable to find that no damage was present when his car was home inspected. This means that Mr R should pay fair and reasonable damage charges.

I note that, by signing his hire agreement with MBFS, Mr R agreed to its Vehicle Return Standards (VRS). I also note VRS states that, if damage is restored by MBFS, the hirer is liable for the actual costs of restoration. And, in these circumstances, I can only disagree with our investigator's argument that the charge for one damage item should be reduced to £250.

I find that I agree with MBFS's argument: it is fair and reasonable, and in accordance with the terms and conditions of Mr R's hire agreement, for MBFS to charge the actual restoration cost of this item.

My provisional decision and responses

My provisional decision is that I uphold this complaint in part. My provisional settlement recommendation is that Mr R should pay charges to MBFS of £140 for two damage items, plus the actual cost of restoring the third item.

MBFS replied accepting my provisional decision and settlement recommendation.

Mr R's response was delayed, because a close family member sadly passed away shortly after my provisional decision was sent to him. I extend my condolences for his loss.

Mr R responded pointing out an inaccuracy in the text of my decision: I described the home inspection video provided to us by Mr R as his video – but it was actually prepared by MBFS's collection agent. I apologise for this inaccuracy, which has now been corrected.

Mr R argued that, because the video was prepared by MBFS's agent, it must be considered useable evidence. He further argued this video evidence supported his view, that the third damage item (identified in his car's second inspection) was not present when his car was first inspected at his home. He wants the charge for restoring the third item to be withdrawn.

A few weeks later, Mr R told us that MBFS had emailed him, saying that we had instructed it to remove the third item. As a result, he paid it £140 for the two other damage items.

On the same day, MBFS told us that Mr R had emailed it, also saying that we had instructed it to remove the third item and seeking clarification. Our investigator assured both parties that no such instruction had been issued.

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.

Where evidence is incomplete, inconsistent or contradictory (as some of it is here), I reach my final decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

Mr O noted that, in my provisional decision, the balance of probabilities fell on the side of MBFS. He considered that, as a result, his integrity was being brought into question. This was not my intention, and I do not seek to cast doubt on Mr O's sincerity. But, faced with contradictory pieces of evidence, I do have to decide which piece I feel is more likely to be accurate in the wider circumstances.

My incorrect description of the home inspection video, pointed out by Mr O, does not change my view about whether or not it is useable evidence. When I came to this view, I took into account the video's contents and clarity, and I did not consider who had prepared it. So, I do not agree with Mr O that it must be thought of as useable evidence.

In the absence of further evidence or arguments, I see no reason to change the findings or settlement recommendation in my provisional decision.

Putting things right

MBFS invoiced Mr O £140, relating to two damage items. Mr O has accepted these charges, and I understand that he has paid MBFS £140.

MBFS also invoiced Mr O £772.68, relating to a third damage item. In response to my provisional settlement recommendation, MBFS has agreed to reduce that charge to the actual cost of restoring this item (£680.69), which will then be payable by Mr O.

My final decision

For the reasons explained above, my final decision is that I uphold this complaint in part. In full and final settlement, I order Mercedes-Benz Financial Services UK Limited, trading as Mercedes Benz Financial Services, to reduce its charge to Mr O for the outstanding damage item to £680.69.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 22 June 2022.

Roy Mawford
Ombudsman