

The complaint

Mr W is unhappy with charges Mercedes-Benz Financial Services UK Limited ('MBFS') applied for damage to a car when it was returned.

What happened

In October 2017 Mr W acquired a car using a hire purchase agreement provided by MBFS.

Towards the end of the contract Mr W says he spoke to MBFS and he was advised to drop off the car at a dealer. Mr W says he drove to the dealer at the start of November 2020 but was told it wasn't arranged for the car to be left there, and the staff member he spoke to was rude and threatening. Mr W left his car at the dealer and let MBFS know where the car was.

In December 2020 the car was collected and three days afterwards was inspected. Following this, MBFS sent Mr W an invoice for the following damage to the car:

| Damage | Cost |
|-----------------------------|-------------|
| LHF alloy | £ 110.00 |
| LHR alloy | £ 110.00 |
| RHR alloy | £ 110.00 |
| RHF alloy | £ 110.00 |
| Tyre sealant used | £60 |
| LHF door | £ 35 |
| LHR quarter panel - scratch | £170 |
| Boot lid - scratch | £210 |
| Rear bumper - scratch | £210 |
| RHR quarter panel - scratch | £170 |
| RHF door - dent | £ 35 |

The charges totalled £1,330.

Mr W was unhappy with this and complained to MBFS. He said he thought the car had been deliberately damaged at the dealer. And he sent a video which he said showed the car when it was dropped off.

MBFS issued its final response in April 2021. This explained, in summary, that MBFS had reviewed the inspection report and thought all of the damage was outside of its Vehicle Return Standards ('VRS') apart from the left hand front door. It said it wouldn't accept Mr W's video as it wasn't time stamped. And it said the collection agent confirmed the car wasn't damaged in transit. MBFS said Mr W's balance was now £1,295.

Mr W was unhappy with this and brought his complaint to our service. He said he had spoken to a specific staff member at MBFS who arranged for the car to be dropped at the dealer. He said he wouldn't have done this if it wasn't arranged as the dealer was an hour

from his house. He said he emailed MBFS to let them know the day after. He said he thought the car had deliberately been “keyed” after he left the car at the dealer. And he provided a video he says was taken when the car was dropped off.

Our investigator issued an opinion and explained she thought the complaint should be partially upheld. She said, in summary, that she thought it was most likely it had been arranged for Mr W to drop off the car at the dealer. She thought all of the damage fell outside of fair wear and tear guidance. But, she thought the video provided by Mr W showed that the damage to the LHR quarter panel wasn’t there when he dropped off the car. So, she thought this charge should be removed. She also said she thought the other damage most likely happened when Mr W had the car.

MBFS disagreed with the view. It said it had reviewed the video and said while the damage couldn’t be seen, the video was taken in poor conditions while the car was wet and dirty, and the area had a lot of reflections in. So, it didn’t accept this showed the car wasn’t damaged.

Mr W was also unhappy with the view. He said, in summary, that the video showed all of the scratches weren’t there. He said the car was “spotless” when it was returned. And he said he would’ve got the car repaired himself had the damage been there when it was given back.

Our investigator got in touch with both parties and let them know what they had said didn’t change her opinion. MBFS then said it would agree to remove the charge for the LHR quarter panel. Mr W remained unhappy. He said it was outrageous to only remove one charge.

The case was then passed to me to decide. I asked MBFS for some further comments about what happened when the car was dropped off. It sent me some communication from the dealer, sent the day after the car was dropped off. This said the dealer tried to confirm some details with Mr W when he returned the car but he refused, and was aggressive and rude towards staff.

I sent Mr W and MBFS a provisional decision on 5 April 2022. My findings from this decision were as follows:

Mr W complains about charges applied at the end of a hire purchase agreement. Entering into consumer credit contract such as this as a lender is a regulated activity, so I’m satisfied I can look into Mr W’s complaint against MBFS.

What I need to consider here is whether the damage to the car falls outside of fair wear and tear guidance. If I think it does, I then need to think about whether it’s fair to charge Mr W for this under the specific circumstances of this complaint.

I’ve firstly thought about whether MBFS could charge Mr W for damage. Looking at the agreement he took, this says:

“you must return the vehicle in line with the Vehicle Return Standards”

“If you fail to take reasonable care of the vehicle and fail to maintain the vehicle in accordance with the manufacturer’s guidelines and/or the Vehicle Return Standards, you will have to pay our costs either of repairing and/or refurbishing the vehicle, or the cost of the consequent reduction in the sale value of the vehicle”

So, considering this, I think Mr W agreed to return the car in a condition in line with the VRS and he agreed to be charged if this wasn’t the case.

So, I'll go on to consider if the charges were fairly applied. As well as the VRS, I've also considered the British Vehicle Rental and Leasing Association ('BVRLA') guide to fair wear and tear. I understand MBFS are not BVRLA members, but I'm happy this is a useful benchmark when considering what's fair and reasonable.

In relation to wheels, the VRS says the following is unacceptable:

"Scuff (sic) chips and scratches exceeding 25mm"

The BVRLA says:

"Scuffs of up to 50mm on the total circumference of the wheel rim and on alloy wheels are acceptable"

Looking at the photos of the wheels, I'm satisfied all of these have significant damage totalling over 50mm on the rim and also damage to the spokes. It follows I'm satisfied this damage was present and fell outside of fair wear and tear.

In relation to dents, the VRS says the following is acceptable:

"Minor dents, typically those caused by door-to-door contact, provided that:

- a) They are less than 13mm (1/2') in diameter"*

The BVRLA says:

"Dents of 15mm or less in diameter are acceptable provided there are no more than two per panel and the paint surface is not broken"

Looking at the photo of the right hand door, I'm satisfied there is a clear dent over 15mm in diameter. It follows I think this damage falls outside of fair wear and tear.

In relation to scratches on the bodywork, the VRS says the following are acceptable:

"Light surface scratches not through the top coat which can be removed by polishing/touch up"

The BVRA says:

"Surface scratches of 25mm or less where the primer or bare metal is not showing are acceptable provided they can be polished out"

Looking at the photos of the LHR quarter panel, there is a very obvious, lengthy scratch running along the panel that is many times over 25mm in length.

Looking at the photos of the boot lid, there is a deep looking scratch that is around 150mm long.

Looking at the photos of the RHR quarter panel, there is a scratch of around 30mm.

It follows that I'm satisfied all of these areas of damage fall outside of the fair wear and tear guidance.

In relation to scratches on the bumper, the VRS additionally says the following is acceptable:

"Scuff marks up to 50mm (2"), which do not adversely affect the overall appearance of your

vehicle”

Looking at the photos of the bumper I can see a collection of scratches or scuffs. I’m satisfied these are both over 50mm and affect the overall appearance of the car. It follows I’m satisfied these fall outside of fair wear and tear.

In relation to the tyre sealant, the BVRLA says:

“The emergency tyre inflation kit, if supplied when new, should be in full working order, serviceable and ready for use”

The inspection report noted that the tyre sealant had been used. And the inspector specifically took a photo of the item. So, on balance, I’m satisfied this wasn’t ready for use, and so falls outside of the BVRLA guidance.

So, in summary, based solely on the condition of the car when it was returned, I think all of the damage MBFS charged for falls outside of fair wear and tear. I now need to consider if there is any other evidence that makes me think it wouldn’t be fair and reasonable to charge Mr W for this.

I’ve firstly considered the video Mr W sent in. Our investigator felt this video showed some of the damage wasn’t present when the car was dropped off. I’ve carefully thought about this. But, I disagree here. The video quickly walks around the car without focusing on any particular area. The video is low resolution. And the car is very wet, appears dirty and the lighting means there are a lot of reflections in the paintwork.

Having considered this video, I don’t believe I can tell from it whether the damage was present or not. So, I’m not putting any weight on this evidence when making my decision.

That being said, I do need to think about the overall situation and what Mr W, and MBFS, says happened.

Mr W has been very consistent in saying it was agreed with MBFS to drop off the car at the dealer. MBFS say this wasn’t agreed. Mr W says staff at the dealer were rude and threatening towards him when he dropped off the car. MBFS say the dealer told it Mr W was rude and aggressive towards its staff.

Clearly, there are two completely contradictory versions of events here. But, I don’t think I need to make a finding about which I think is most likely to have happened. That’s because, whatever occurred, I’ve seen evidence MBFS knew the car had been left at the dealer the day after it was dropped off. I appreciate there seems to have been an issue with the V5. But, it hasn’t provided any evidence about the condition of the car such as photos, videos, an inspection report or any testimony from the dealer until over six weeks later. Given how obvious some of the damage was, which I’ll come on to, I might have also expected the dealer to mention this to MBFS when it emailed about the situation.

Because of the timescale here, I think, on balance, some of the damage might have occurred after Mr W left the car at the dealer. Mr W has been very consistent in his belief that the car was damaged with a key – and it does appear this could possibly have been the case looking at the photos of the car.

That being said, I don’t agree with Mr W that the car was likely ‘spotless’ when it was dropped off. I say this as from the photos, I believe the damage to the wheels was historic – there is significant damage to all wheels that does not look recent. The damage to the bumper appears to have been the result of scraping the car rather than anything intentional.

The dent to the door also looks like it was likely caused by general use of the car and I believe this was likely historic.

I've then thought about the scratches to the car. I think that the damage to the LHR quarter panel and the boot lid was possibly reasonably recent and could have been intentionally caused. I say this as the scratches are very 'clean', in areas very unlikely to be impacted while driving or in general use of the car and look quite deep.

The scratch to the RHR quarter panel is smaller than the others and quite low down. The angle of the scratch also appears more 'natural' than the others. I think on balance this was most likely historic.

I should point out here very clearly that I am not making a finding that the dealer damaged the car as Mr W has alleged. And I don't know for sure what happened here. But, on balance, thinking about all of the evidence including Mr W's testimony, I haven't seen enough to make me think it's most likely the damage to the LHR quarter panel and boot lid was there when Mr W left the car at the dealer.

Given the car wasn't looked at for six weeks following this, I find it wouldn't be fair and reasonable to charge Mr W for this damage. But, I think it's most likely the other damage was historic and most likely happened when Mr W had the car. So, I think these charges should stand.

I gave both parties two weeks to come back with any further information or evidence.

MBFS responded and said it agreed with my decision.

Mr W came back and made various points in response to my decision for me to consider.

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 W said in response to my provisional decision that he accepted the damage to the alloys and the RHF door dent, along with the charge for the tyre sealant. So, I won't comment on these further.

Mr W questioned some of the amounts charged and pointed out he didn't think the bumper scuff should be charged at the same rate as some of the larger damage. I've carefully thought about what Mr W said here. I understand his point that the specific damage may cost differing amounts to put right. But, Mr W agreed to be charged for the consequent reduction in the value of the car due to the damage when it was resold.

It isn't possible for MBFS to know precisely what specific damage would reduce the value by what exact amount. So, it needs to estimate – and the key thing is that I don't think the amounts charged for the damage are excessive in this case. So, I don't think MBFS needs to take any action here.

I've thought very carefully about what Mr W said about the damage to the RHR quarter panel and the bumper that he didn't accept. Having reviewed all of the evidence again, and in particular having once more reviewed all of the photos of these areas, I still think, on balance, that this damage was most likely historic and occurred when Mr W had the car. It follows that I still think it's fair and reasonable for MBFS to charge Mr W for these.

Mr W also said he thought he should be compensated for his time and the stress caused. I've considered whether any payment should be made by MBFS for distress and inconvenience. But, it's important to note that I only think it would be reasonable to consider this in relation to what I've found MBFS actually did wrong here – not the overall impact of the situation on Mr W. In other words, I can consider an award for the distress caused by MBFS charging for two areas of damage that, on balance, I think it should not have.

Considering this, while I do understand this would've had an impact on Mr W, I don't think this would be enough to say MBFS needs to make any further award here.

I've considered everything else Mr W said in response to my provisional decision. Having thought about this, along with everything else on the case again, I still think this complaint should be upheld. And, I still think it would be fair and reasonable for MBFS to remove the charges for the damage to the LHR quarter panel and the boot lid.

My final decision

My final decision is that I uphold this complaint. I instruct Mercedes-Benz Financial Services UK Limited to put things right by doing the following:

- Remove the charge for the LHR quarter panel - £170
- Remove the charge for the boot lid - £210

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 20 May 2022.

John Bower
Ombudsman