

The complaint

Mr H complains about a decision taken by Mercedes-Benz Financial Services UK Limited ("MBFS") to charge him £581 for damage to the windscreen on the car he returned to it after his hire purchase agreement in respect of that car came to an end.

What happened

Mr H entered into a hire purchase agreement with MBFS for the supply of a car on 14 March 2017.

Under the terms of the hire purchase agreement, everything else being equal, Mr H undertook:

- to pay a deposit to the supplying dealership
- make a number of monthly payments to MBFS
- return the car, at the end of the hire period, to MBFS and return it to MBFS in line with its 'vehicle return standards'

After Mr H returned the car, MBFS took the decision to seek £581 from him for damage to the windscreen. MBFS submitted that the chip on the windscreen had started to crack and wasn't repairable, so a replacement screen had to be installed. It also said that its vehicle return standards state that:

"scratches and cracks in glass or stone chips with signs of cracking will need to be repaired and chips greater than 5mm are not acceptable".

On the other hand, Mr H says he understood that as long as any damage to the windscreen was acceptable to an MOT inspector then there would be no charge in respect of that damage. In coming to this view, Mr H pointed out that his hire purchase agreement states:

- *"Glass – Acceptable – chips on windscreen, which are less than 5mm, providing they do not obscure the driver's line of vision to a maximum of 2 per windscreen (MOT standards)."*

and that the MOT inspection manual: cars and passenger vehicles states a possible test fail would be:

- *"Damage in windscreen zone A [in the swept area of the windscreen, 290 mm wide, centred on the steering wheel] more than 10mm in diameter"*
- *"Damage in the remainder of the windscreen's swept area more than 40mm in diameter"*

Mr H's complaint was considered by one of our investigators who concluded that in all the circumstances MBFS should write off the charge of £581, but it need do nothing further (including compensating Mr H for the distress and inconvenience this whole matter might have caused him).

MBFS responded to say that it didn't agree with the investigator's view.

Mr H responded to say that he agreed with the investigator's view that MBFS should have to write off the sum of £581, but wondered whether he should be compensated for the distress and inconvenience this whole matter had caused him, something that the investigator had concluded wasn't appropriate.

I issued a provisional decision on this case in May 2022. In summary I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The agreement states:

"When it is time to return your vehicle whether this is at the end of the period of hire or earlier (when requested to do so), you must return the vehicle in line with the Vehicle return Standards.

The Vehicle Return Standards are detailed below...

Glass Acceptable

- *Chips on windscreen, which are less than 5mm, providing they do not obscure the driver's line of vision to a maximum of 2 per windscreen (MOT standards).*
- *Headlamp lenses with minor chips, which do not detract from the overall appearance of your Vehicle or affect the efficiency of the lamp.*
- *Light scratches around the periphery of the windscreen.*

Not Acceptable

- *Incompatible window etchings and non-factory fitted tinted glass.*
- *All lamps must be operational, holes or cracks in the glass or plastic covers of lamp units are not acceptable.*

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, as compensation.

The decision to repair the vehicle or not to repair the vehicle rests with [MBFS] and/or the retailer or manufacturer who will undertake the Vehicle Return Standard Inspection on our behalf."

A separate and standalone vehicle return standards booklet/document states:

Glass Acceptable

- *Chips on windscreen, which are less than 5mm, providing they do not obscure the driver's line of vision to a maximum of 2 per windscreen*
- *Headlamp lenses with minor chips, which do not detract from the overall appearance of your [vehicle] or affect the efficiency of the lamp*
- *Light scratches around the periphery of the windscreen*

Not Acceptable

- *Scratches and cracks in glass or stone chips with signs of cracking will need to be repaired*
- *Cracks or damage to the windscreen within the driver's line of sight*
- *Chips greater than 5mm*
- *Incompatible window etchings*
- *All lamps must be operational, holes or cracks in the glass or plastic covers of lamp units are not acceptable.*

MBFS has provided our service with the inspection report carried out by its agent when the car was collected from Mr H. This report notes there is a chip to the “front screen” and this note is supported by a photograph and a video.

I've looked at the photograph and video very carefully and I'm satisfied these show there was indeed a chip to the windscreen that had started to crack. I'm also satisfied that these show the chip/crack to be at the bottom left hand side of the windscreen (as viewed by the driver) and situated outside zone A [in the swept area of the windscreen, 290 mm wide, centred on the steering wheel].

Given the above I accept that if I was to find that MBFS could rely on the terms of its separate and standalone vehicle return standards booklet/document then it might be appropriate for it charge Mr H £581. But in the particular circumstances of this case I don't think MBFS can reasonably do so.

In my view it was entirely reasonable for Mr H to conclude that the vehicle return standards he was bound by weren't MBFS' standalone booklet/document terms (whether provided to Mr H or not), but the terms quoted on the face of the agreement which state (in summary):

“...you must return the vehicle in line with the Vehicle return Standards.

The Vehicle Return Standards are detailed below...

Glass Acceptable

- *Chips on windscreen, which are less than 5mm, providing they do not obscure the driver's line of vision to a maximum of 2 per windscreen (MOT standards)."*

I've considered the vehicle return standards on the face of the agreement to decide whether they allow, in the particular circumstances of this case, for MBFS to charge Mr H the sum of £581 that it did.

In my view the term “Chips on windscreen, which are less than 5mm, providing they do not obscure the driver's line of vision to a maximum of 2 per windscreen (MOT standards)” is ambiguous and can be interpreted in a number of ways, including Mr H's interpretation that if chips/cracks to the windscreen wouldn't result in the car failing a MOT test then they are deemed acceptable and not chargeable.

In law and as a matter of what is fair and reasonable, the party who didn't draft the contract (agreement) should get the benefit of the most favourable interpretation of any ambiguous term. This is because the party who drafted the contract (agreement) had the opportunity to make the terms clear and the other party shouldn't lose out because of its failure to do so.

In this case, MBFS drafted the contract (agreement) and included what I consider to be an ambiguous term, because it can be interpreted in a number of ways, including Mr H's interpretation. And it therefore follows that I think as part of the fair and reasonable outcome to his complaint Mr H should get the benefit of his (more favourable) interpretation. And this means I don't think it was fair for MBFS to have charged Mr H the £581 that it did.

Because I've found that it was unfair for MBFS to have charged Mr H £581 for the windscreen damage it follows that I also find that it would be unfair for any adverse information in this respect to be recorded with third party credit reference agencies. So, if MBFS has recorded such information with third party credit reference agencies then the same should be removed.

As well as looking for the charge of £581 to be waived/written off Mr H also submits that he should be compensated for the loss of income he has suffered in dealing with this matter. But I don't think it would be appropriate for me to direct MBFS to pay compensation in this respect. Like the investigator I think Mr H could have reasonably dealt with this matter in his own time. I would also add that complaining to a business, or our service, is always going to result in some distress and inconvenience being caused.

Finally, and for the sake of completeness, I would add that it isn't my role to fine or punish MBFS, or to direct it to carry out a wider review of its practices, processes and (complaint) cases, this is the role of the regulator. My role is simply to consider this case/complaint on its own facts and merits and to decide what, if anything, MBFS should have to do to 'put things right' in respect of it.

I then went on to outline what MBFS should do, which was waive the £581 charge it has been looking to recover from Mr H and remove any adverse information recorded with third party credit reference agencies in respect of the same.

Mr H responded to my provisional decision to say that he had nothing further to add and MBFS responded to say that it accepted it.

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.

Given that Mr H has confirmed he has nothing further to add and MBFS has confirmed that it accepts my provisional decision, I see no reason to depart from my provisional findings and I now confirm them as final.

My final decision

My final decision is that I uphold this complaint and Mercedes-Benz Financial Services UK Limited must:

- waive the £581 charge it has been looking to recover from Mr H
- remove any adverse information recorded with third party credit reference agencies in respect of the above sum of £581.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 23 June 2022.

Peter Cook
Ombudsman