

The complaint

Mr E complains that Mercedes-Benz Financial Service Limited (MBFS) applied charges unfairly when his hire purchase agreement (HPA) came to an end.

What happened

Mr E acquired this car in May 2018. It was about four months old with less than 2,000 miles on the clock at the point of supply and cost around £10,000. When the agreement came to an end, in May 2021, MBFS inspected the car and sent Mr E an invoice for over £3,500 - made up of nearly £200 for a missing service history, around £2,500 for damage and about £800 for excess mileage. Mr E felt some charges were unfair and complained to MBFS.

MBFS says the car was inspected twice shortly after return, damage was noted at both inspections and the first report explained that charges would be advised later - as the car would be subject to a second inspection. MBFS considers charges were properly applied in line with its vehicle return standard (VRS). It says Mr E was provided with the VRS (and a pricing matrix for estimated repair costs) at the start of the HPA. And he was reminded of his obligations before the agreement ended - in a pack that also explained he could fix any damage before collection, if he wanted.

MBFS offered to reduce the charges by 10%, as a goodwill gesture, but Mr E didn't think that was fair. He was disappointed the agent didn't identify all of the damage or cost the repairs when the car was collected. He said he was deprived of the chance to check the pricing matrix and decide whether to keep the car because the first inspection recorded less damage than the second. And, if he'd known how much he'd be charged, he could have paid the final settlement figure - as there's only about £1,900 difference. Mr E accepted some charges along with excess mileage and incomplete service history costs. But, he thought it was wrong that he's been charged for others - replacement tyres, for example, as the agent wouldn't have driven the car away if tyres weren't legal.

Mr E referred the matter to our service and one of our investigators considered the evidence. He was satisfied that Mr E was made aware of the VRS before collection and he had the option to check the car and have it repaired himself. Aside from the replacement tyres, the investigator thought the damage charged for was likely present on collection and falls outside relevant fair wear and tear standards. He wasn't persuaded it was unfair of MBFS to apply these charges. But, he noted the first inspection recorded between 3 and 6mm tread on tyres. He thought it likely, on balance, these items came within the VRS. And he recommended MBFS should remove the related charges (or refund the cost plus interest if Mr E has paid this already).

MBFS accepted the investigator's recommendations and agreed to remove the relevant charges but Mr E remained unhappy. In summary, he thinks the collection agent had a vested interest in increasing the damage found to retain MBFS as a client - and the unreasonable charges for replacement tyres demonstrate this. He says it's convenient for MBFS to have a soft first inspection and second harder one. And the second inspection identified substantially more damage - 18 items compared to just 10 on the first (or more than double if tyres are included) - so it must have been more severe or the first was

negligent. Mr E feels he's been open and honest in accepting most of the charges. He remains of the view that four were wrongly applied as follows:-

1. RH rear quarter panel – dented 15-50mm - cold metal repair - £35.00 – MBFS says this is outside the VRS as the dent exceeds 13mm and dents on swage lines or folder edges, high profile panels, bonnets/wheel arches etc. are not acceptable. Mr E says it's not more than 13mm when compared to the measuring tool
2. bumper rear - scratched - refinish - £210.00 – MBFS says it's chargeable as scuff marks in excess of 50mm are not acceptable but Mr E doesn't accept this exceeds 50mm when compared to the measuring tool
3. LH rear quarter panel - dented with paint damage - repair and refinish - £260.00 – MBFS says this is outside the VRS as any chipping and scratching of paintwork penetrating the base coat and/or has caused corrosion which cannot be polished out is not acceptable. Mr E can't see a dent visible in the photos provided – he thinks this looks like the curvature of the car body
4. LH sill – dented 50-100 mm - repair and refinish - £260.00 – MBFS considers this falls outside the VRS which say dents on swage lines or folder edges, high profile panels, bonnets/wheel arches etc. unacceptable. Mr E thinks this isn't more than 13mm and it looks the same as the RH rear quarter panel dent that only cost £35.00 to fix.

Mr E feels it's also unfair to suggest that he had opportunity to calculate the likely cost of damage and decide whether to fix or keep the car. He can't reasonably be expected to identify damage that even the first inspector didn't record. And he was told it was too late to keep the car after the charges were notified.

Our investigator reviewed the four areas of damage that Mr E contests. As regards item 1 above he says the damage is at least 20mm, on a conservative measurement. And the 50mm limit referred to in item 2 relates to scuffs and there are three areas of damage visible showing significant paint damage adversely affecting the appearance of the car. He considers the dent is clearly visible on the inspection video for item 3 and, in terms of item 4, the dent looks to exceed 13mm and there's damage to paintwork, whereas the dent on the RH rear quarter panel didn't go through the paint.

The investigator was satisfied that the damage in question is present and chargeable, as it falls outside the relevant standards. He wasn't persuaded that MBFS should have to do more than he'd already recommended and Mr E asked for an ombudsman to review the matter.

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

MBFS has agreed to remove charges applied in respect of replacement tyres now and Mr E accepts all but four of the remaining charges. So, I'm going to deal with the outstanding issues only in this decision.

I can see Mr E is unhappy with MBFS's return process generally. And I should make it clear at the outset that I don't have the power to tell MBFS how to operate on a day to day basis. I am not a regulator. The role of our service is to resolve disputes between financial businesses and their customers informally. And my job here is to consider the evidence provided by both parties, without taking sides, in order to decide what I think is fair and reasonable, in all of the circumstances of this particular complaint.

Like the investigator, I've reviewed the evidence including both inspection reports and associated photographs and video footage of the car. I'm satisfied the first report records damage that goes beyond what's acceptable under relevant standards and the inspector set out, for example, where damage exceeds 50mm or goes through to the basecoat. I appreciate Mr E would have preferred it if this report had identified every item that was later charged for and included repair costs. But, I think the first report makes it fairly clear that this was a preliminary inspection and a second inspection would take place. And I'm satisfied that relevant industry guidance, issued by the British Vehicle Rental and Leasing Association (BVRLA), allows for a second inspection in this situation.

I realise Mr E is frustrated that additional damage was identified at the second inspection. He's suggested the collection agent has a vested interest in finding damage is chargeable. I've seen nothing to show the agent did something wrong here. And I don't think it's surprising that there are differences between the two inspections. The purpose of the second was to check the car in better conditions – after cleaning say, or in better light – which allows damage (and the most appropriate repair methods) to be assessed more closely. I've seen instances where charges have been removed after a second inspection - because damage wasn't as bad as first appeared. And, taking everything into consideration, I can't fairly find it was unfair or unreasonable for MBFS to arrange a second inspection here.

Having reviewed the evidence available, I'm satisfied the damage still disputed is present. I consider this goes beyond what could reasonably be considered fair wear and tear under the VRS and the BVRLA guidance. I think MBFS is entitled to be compensated for the failure to return the car in line with obligations set out in the HPA. And I can't fairly find it should waive or lower the charges any further.

I appreciate Mr E feels that he should have been given more information about the likely charges earlier in the return process – so he could decide whether to keep the car or not. And he considers it is unreasonable to expect him – as a layperson - to realise that damage present went beyond what's acceptable and/or how much might be charged. But, I'm satisfied Mr E was made reasonably aware that this car would be inspected on return. The HPA says he had to maintain it in good condition, he's responsible for making good any damage, the car's condition would be assessed in line with the VRS and he could be charged for any damage present beyond fair wear and tear. I think it's likely Mr E was also reminded about this before the agreement ended. And it was open to him to have the car checked elsewhere before it went back - if he was unsure if damage was chargeable and/or how much it might cost to put right.

Ultimately, I'm satisfied that the damage disputed by Mr E is present and chargeable. I think the amounts charged seem to be in keeping with MBFS's price matrix and I'm not persuaded the relevant charges are disproportionate or unreasonable. I can't fairly find MBFS was wrong to apply these charges in the circumstances. And I'm not persuaded it would be fair or reasonable to require MBFS to remove the charges or reduce them further.

I realise this decision is likely to come as a disappointment to Mr E as it's not the outcome he hoped for. He's not obliged to accept what I've said however – in which case, it remains open to him to pursue the matter by any other means available.

My final decision

My decision is I uphold this complaint and I require Mercedes-Benz Financial Service Limited (MBFS) to remove the relevant charges for replacement tyres or, if Mr E has paid for these already, MBFS should refund the cost, plus interest at 8% simple a year from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 19 August 2022.

Claire Jackson
Ombudsman