

The complaint

Mr H complains Mercedes-Benz Financial Services UK Limited (MBFS) has unfairly applied end of contract charges following the end of his car hire agreement.

What happened

In September 2018, Mr H entered into a 24 month hire agreement with MBFS for a new car. In October 2020, the contract was extended by three months meaning it came to an end on 26 December 2020.

Mr H said at the time of extending the agreement, he was told the car would be collected on 26 December 2020. However when this day came, the car wasn't collected. On 13 January 2021, MBFS sent correspondence to Mr H saying as the agreement had come to an end, he needed to arrange collection of the car urgently and no later than 19 January 2021. Mr H said at the time of this correspondence, he was ill with Covid-19 so he was unable to deal with it at the time. The car was eventually collected on 26 January 2021.

In line with MBFS' returns procedure, the car was inspected. Damage was found to the wheels, bumper and taillight. MBFS said Mr H had to pay £702 for the damage. They also said as the car wasn't returned until 26 January 2021, Mr H had to pay £353 for 30 extra days hire as he had use of the car during that time. Meaning he was required to pay a total of £1,056 in end of contract charges. Mr H complained. He also commented he had only travelled around 10,000 miles but he was permitted to travel 20,000 so that should be taken into account.

MBFS said the end of contract charges had been applied correctly. In relation to the car being returned under the permitted mileage, they said that was Mr H's decision to do so. Unhappy with their response, Mr H referred the complaint to our service.

Our investigator initially recommended the case was partially upheld. They believed the damage charges had been applied fairly but felt the extra days hire should be charged from 19 January 2021 (which was the deadline given for Mr H to arrange a collection) up to when it was collected on 26 January 2021. Mr H disagreed. He said it was MBFS' responsibility to arrange for the car to be collected and they had told him it would be collected on 26 December 2020. He maintained his position on the damage charges and added that he thought they were excessive. The investigator requested a copies of the call between Mr H and MBFS when the agreement was extended but MBFS was unable to find it based on the telephone numbers provided by Mr H.

MBFS said their collection agents had contacted Mr H on 13 January 2021 and stressed the car needed to be returned. They said as this didn't happen and he still had use of it, they were entitled to charge for it.

In light of the above evidence, the investigator changed their opinion and said MBFS had acted fairly. They said the extra days hire was an accurate reflection of the hire of the car and Mr H shouldn't benefit from free use of it.

In June 2020, I issued a provisional decision outlining my intention to partially uphold Mr H's complaint. I said:

"Collection of the car

Both parties accept the agreement was extended by three months, ending on 26 December 2020. That isn't in dispute. I note Mr H comments that he was told the car would be collected on 26 December 2020 but he thought that was strange given it was a public holiday. Unfortunately this call recording isn't available and having considered MBFS contact notes, there is no indication of what was said. On balance given 26 December 2020 was a UK public holiday, I'm not persuaded MBFS would've said the car would be collected on that day. I find it's most likely they confirmed that was the date the agreement ended and the car would need to be returned thereafter.

Mr H has told our service that he was ill with Covid-19 in January 2021 and he was unable to deal with the collection. Having reviewed MBFS contact notes, I can see in response to their email on 13 January 2021, he said he was expecting the car to be collected although he thought 26 December 2020 was strange given it was a public holiday. He said he had another car that was delivered in December 2020 so the car in question was sat on his drive. He also made it clear to MBFS that he was currently in hospital due to Covid-19 and if his brother could arrange collection on his behalf. It's clear from these notes that Mr H was not in a position to return the car himself as he was hospitalised and it's likely to explain why he was unable to answer the calls from MBFS' collection agents. Despite this, he made alternative arrangements for the car to be collected. For these reasons, I believe it's unlikely he used the car once the agreement ended so I disagree with MBFS' comments that he continued to use it. Given the above circumstances, I don't believe it's fair for MBFS to charge Mr H for extra days hire, I find this should be removed from the outstanding balance.

Damage charges

*I've reviewed the terms of the agreement and concerning the return of the car, it says:
"You must return the vehicle together with everything supplied with the vehicle to us at your own expense (in accordance with the Vehicle Return Standards). If you fail to take reasonable care of the vehicle you will have to pay our costs of repairing and/or refurbishing the vehicle."*

MBFS has provided a copy of their return standards which sets out what is considered acceptable and unacceptable damage. In addition to this, I've considered the guidance of the British Vehicle Rental & Leasing Association (BVRLA). It is used industry wide to assess damage when new cars have been returned as part of a car finance agreement. In this case, the car was new when Mr H hired it so I believe it's fair to also take this guidance into account.

MBFS have applied the following charges for damages:

1	Wheel LHF	Rim damaged	£110
2	Wheel LHR	Rim damaged	£110
3	Wheel RHF	Rim damaged	£110
4	Bumper	Scratched	£210
5	Lamp RHR	Broken	£162
		Total	£702

Wheels

The inspection report indicates there were scuff marks on three of the four wheels. The BVRLA guidance says scuffs up to 50mm on the total circumference of the wheel are acceptable. MBFS' return standards say scuff marks up to 25mm are acceptable. Having reviewed the photographs, I can see there are scuff marks on all three wheels which in my opinion are above MBFS and the BVLRA'S tolerances. Therefore, I'm satisfied this damage is beyond fair wear and MBFS are entitled to charge for this.

Bumper

The inspection report said there was a scratch to the bonnet. MBFS returns standard say damage isn't acceptable if "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 BVLRA guidance says "Surface scratches of 25mm or less where the primer or bare metal is not showing are acceptable provided they can be polished out". I've seen the pictures of the scratch and the measuring tool shown next to it, it's clear this scratch is beyond what MBFS and the BVLRA would consider to be acceptable. Therefore, I find MBFS are entitled to charge for this.

Lamp RHR

The inspection says the lamp is broken. Based on MBFS' return standards, when the car is returned it must be free from broken or damaged items. As it's clear the lamp is broken, this wouldn't be considered fair wear tear and MBFS are entitled to charge for it. I understand Mr H accepts this damage.

I note Mr H's comments that the car was returned under the permitted mileage of 20,000 therefore this should be taken into consideration. While I accept the mileage wasn't exceeded, there is nothing in the agreement terms that say MBFS must take unused mileage into account when applying end of contract charges. So I can't say they've done anything wrong in that respect.

Taking everything into account, I believe MBFS has acted reasonably when applying the end of contract charges for damage and I've seen nothing to show that the amounts charged are excessive or unreasonable. However for the reasons explained above, I don't find it's fair for them to charge for the extra days hire".

Response to the provisional decision

MBFS said although they aren't in receipt of evidence concerning Mr H's hospital admission, they would agree to remove the charge for the extra days hire. Mr H didn't provide any further information or evidence.

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 still consider my findings to be fair and reasonable in the circumstances. Therefore, my final decision is the same for the reasons as set out in my provisional decision.

My final decision

For the reasons set out above, I've decided to uphold Mr H's complaint.

To put things right, Mercedes-Benz Financial Services UK Limited should remove the charge for the extra days hire.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 26 July 2022.

Simona Charles
Ombudsman