

## **The complaint**

Ms C complains about charges she's been asked to pay after she returned a car she had been financing through an agreement with Mercedes-Benz Financial Services UK Limited ("MBFS").

## **What happened**

I issued my provisional decision on this complaint in September 2020. An extract from that provisional decision is set out below.

*Ms C has been represented by her husband at times but for ease, and because Ms C is named on the finance agreement, I will refer only to her in this decision. I mean no disrespect to Mr C when doing so.*

*The details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on giving my reasons for my decision.*

## **What I've provisionally 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.*

*Having done so, I'm expecting to partially uphold this complaint as I don't think MBFS have been fair when charging to replace the headlight.*

*Ms C acquired her car under a hire agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.*

*The terms of the finance agreement held Ms C responsible for keeping the car in good condition. She would be responsible for any damage if the car wasn't returned in the correct condition.*

*Ms C says the contract doesn't allow for a second inspection. She's explained that the contract says it's the condition of the car on "return" that is important, and the return date is the date of collection and not the subsequent date of the second inspection. If the condition of the car had deteriorated after the point of collection then I don't think it would be fair to hold Ms C responsible for that deterioration. But I'm not persuaded there is sufficient evidence the car has been damaged after collection.*

*Whilst I understand Ms C suggests some of the damage may have occurred in transit when the car was being taken to the auction site, I don't have sufficient evidence to say the damage wasn't present when the car left Ms C. I think it's much more likely the damage would have been sustained in Ms C's prolonged tenure than in the couple of days before the final inspection took place.*

*Ms C says that a second inspection is unfair as that gives MBFS two opportunities to identify*

*damage whilst she has only had one. I don't think the opportunity to spot damage is a relevant consideration. The issue here is whether the car had damage that was in excess of the relevant standard. And, regardless, I think Ms C had much more opportunity to spot damage in her extended tenure than MBFS would have had over the course of two inspections.*

*It's for MBFS to decide their processes and it's for them to decide how they identify any excess wear and tear that could be chargeable under the agreement, so I don't think they've been unreasonable when inspecting the car twice.*

### **The damage charges that remain**

*MBFS have their own vehicle return standards (VRS) but the industry guidelines for what is considered fair wear and tear when vehicles are returned at the end of their lease, is provided by the British Vehicle Rental and Leasing Association (BVRLA). I understand that MBFS aren't members of the BVRLA but I think it's only fair to consider that standard in tandem with the VRS when considering if the damage in the inspection reports can fairly be considered to be beyond normal wear and tear and chargeable.*

*Ms C says the contract only refers to the VRS and this is therefore the only standard that should be considered. I think the VRS is in general a more rigorous standard than the BVRLA. I've therefore considered the BVRLA guidance too as where it is more lenient I may want to consider why MBFS thought it reasonable not to follow industry guidance.*

### **I don't think it's fair for MBFS to charge for the headlight damage**

*The BVRLA guidance says "all lamps and lamp units must work. Minor scuff marks or scratches of 25mm or less are acceptable".*

*MBFS have explained that the VRS says:*

*"All lamps and units must be operational. Scuffs or scratches of 25mm or less are acceptable. Holes or cracks in the glass or plastic covers of the lamp units are not acceptable. Where fitted, the vehicle's ADAS (automated driver assistance systems) must have been recalibrated following the replacement of a lamp or lamp unit".*

*I've looked at the VRS and it says:*

*"Headlamp lenses with minor chips, which do not detract from the overall appearance of your vehicle or affect the efficiency of the lamp" are acceptable.*

*And "All lamps must be operational, holes or cracks in the glass or plastic covers of lamp units are not acceptable".*

*That standard is repeated in the hire contract and I can find no reference to scratching of the lens being unreasonable. I note that the charging matrix that MBFS publish doesn't provide a cost for damage to scratched headlights either. There's simply a provision for replacement of headlights that have cracks or holes or are broken.*

*The inspector's photographs don't appear to show any cracks or holes in the headlight. They do show a large scratch but there's no evidence the headlight isn't operational. Whilst the BVRLA guidance would suggest the scratched lens was beyond fair wear and tear MBFS appear to have chosen to be more lenient in their standard. That was a decision for them to make, but having done so, I don't think it's fair for them to make a charge for refurbishment or replacement of the headlight here when its condition hasn't breached their standard.*

***I think the following charges have been fairly levied.***

### ***Alloy wheel damage***

*The BVRLA guidelines state, “any damage to the wheel spokes, wheel fascia, or hub of the alloy wheel is not acceptable” and “scuffs up to 50mm on the total circumference of the wheel rim and on alloy wheels are acceptable”.*

*The VRS says, “Dents on the wheel rims and wheel trims are not acceptable. Chips, scratches or scuffs up to 50mm on the total circumference of the wheel are acceptable, providing they can be repaired to a professional standard. Any damage to the wheel spokes, fascia or hub of the alloy wheel is not acceptable. There should be no rust or corrosion on the alloy wheels.”*

*I think there are scuffs in excess of 50mm on the total circumference of both damaged alloys, so the charge is reasonable.*

### ***Tyre cut***

*The BVRLA guidelines state, “there must be no damage to sidewalls or tread” and similarly the VRS says, “Any gouge, crack, cut, torn or plugged tyre side wall is not acceptable”. The tyre here is cut on the sidewall so the charge is reasonable.*

### ***Bumper scratch***

*The BVRLA guidelines state, “surface scratches of 25mm or less where the primer or bare metal is now showing are acceptable provided they can be polished out. A maximum of four surface scratches on one panel is acceptable.”*

*And the VRS says, “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 is not acceptable”.*

*The scratch here looks to be longer than 50 mm and it’s penetrated the base coat. So, I think the charge is reasonable as the damage is in excess of the guidance.*

*I can understand Ms C’s frustration that MBFS failed to identify the presence of the spare key but when they did realise their error they did remove the charge. I don’t think the fact a mistake was made is reason to subsequently waive any of the other charges; those charges appear to have been levied legitimately.*

### ***My provisional decision***

*For the reasons I’ve given above I’m expecting to uphold this complaint in part and to tell MBFS to waive the charge they have made to replace the headlight.*

### ***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.*

*In response to my provisional decision MBFS said:*

*“After reviewing our standards and the customers agreement I can see that although it doesn't state the exact mm it should fall under...After reviewing these guidelines and the images provided of the scuff we have both agreed that these marks do not fit within the standards set out for the customer”. They therefore agreed to remove the charge for the hand lamp.*

Ms C said the fact MBFS made a mistake when initially charging for a missing key was important. She said it demonstrated they were not following their own procedures as, if they had, the presence of the key would have been reported earlier. She suggested this lack of reporting could explain why damage that was done after the car had left her possession was not reported.

I understand Ms C's point and in my provisional decision I think I considered it. I said:

*“I can understand Ms C's frustration that MBFS failed to identify the presence of the spare key but when they did realise their error they did remove the charge. I don't think the fact a mistake was made is reason to subsequently waive any of the other charges; those charges appear to have been levied legitimately”.*

I'm not therefore prepared to ask MBFS to remove any additional charges, but I do think they should waive the charge for the replacement headlight.

### **Putting things right**

I've not been provided with any additional information that has led me to change my provisional decision on this complaint. My provisional decision therefore becomes my final decision.

### **My final decision**

For the reasons I've given above I uphold this complaint in part and tell Mercedes-Benz Financial Services UK Limited to waive the charge they have made to replace the headlight.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 2 November 2022.

Phillip McMahon  
**Ombudsman**