

The complaint

Mr S complains about the end of contract damage charges raised by Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance ("MBFS").

What happened

Mr S acquired a van through a hire agreement with MBFS in 2017. The vehicle was collected at the end of the agreement on 9 February 2022 and delivered to a local depot. It was then moved on 16 February 2022 to an inspection centre, and a full damage inspection took place on 9 March 2022. This highlighted five items of damage outside of fair wear and tear guidelines, and the repair costs for these totalled £845.55. These were:

Nearside front door interior dent - £120.24

Nearside front wheel alloy damage - £79.15

Nearside rear quarter panel dented - £19.61

Offside rear roof dented/rusted - £418.53

Rear offside cargo door dent - £208.02

Mr S disputed these charges and complained to MBFS. He said that the van had done unaccounted for mileage after it had been collected from him, which he wanted explained, and the damage must have occurred during this period of time as there was no damage when he returned the vehicle.

MBFS sent their final response letter (FRL) on 31 March 2022. They partially upheld his complaint and removed the charges for the nearside front door interior dent and nearside rear quarter panel dent. They said that as there had been a delay in inspecting the van, these items couldn't be shown to be "aged damage", so they would remove them. This left an invoice of £705.70 owing for three items of damage.

Mr S didn't agree with this and brought his complaint to our service. He said there was additional mileage on top of the delivery of the vehicle to the inspection centre and the damage wasn't caused by himself.

An investigator here looked at the complaint and gave their view which partially upheld the complaint. They felt that MBFS couldn't prove that the rear offside cargo door dent wasn't done in the period between the van being collected and it being inspected, so said this £208.02 charge should be removed. However, they said that the two remaining charges were fair; the alloy wheel damage didn't appear to be fresh, and similarly, the rusting/damage to the roof appeared in their opinion to have been there for some time.

This left two charges for a total of £497.68 still payable. MBFS accepted this view, but Mr S didn't. He wanted an explanation about the miles travelled which were unaccounted for, and why he'd been told it was left outside an employee's house overnight. He also said he felt that corrosion of bare metal can occur quickly, so this isn't a sign of aged damage. He asked

for an ombudsman to make a final decision.

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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr S was supplied with a van under a hire agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

Because of approximately 100 additional miles covered by the vehicle after collection which are unexplained, and the delay of around a month in inspecting the van, it will be impossible for me to know with total certainty when the damages in this complaint have occurred. Mr S hasn't provided any photographic evidence of these areas to show they were undamaged when the van was collected, and MBFS have only provided photos from around a month after the van was collected. They've also offered no explanation for the additional mileage covered, other than the fact that a driver had the car overnight at their house before delivering it to the inspection centre.

As such, I have to make decisions on the balance of probability. That means I need to weigh up the evidence, and make a decision based on what I think is most likely to have happened here.

On this basis, I'm not saying one party or the other is telling the truth or not. I'm making a judgement, based on the evidence, of what I think is most likely to have happened.

MBFS have accepted the investigator's findings with regards to the charge for a dent to the rear offside cargo door. I agree with those findings. For a dent, it isn't clear when this might have happened and what caused it. There was a period of around a month between the vehicle being collected and inspected, and around 100 unexplained miles added to the vehicle in that period.

MBFS have said that the vehicle was kept overnight at a driver's address before being transferred to their inspection centre. This is something which happens quite frequently, and in itself doesn't cause me any concern. But the delays in delivering the van to the inspection site, followed by a much longer delay after this before inspecting the van, do bring this item of damage into question. The 100 extra miles covered does suggest the van could have been used during this period, as we haven't been told where the driver lives to gauge whether that explains the mileage discrepancy.

Taking these things into consideration, I agree that it's fair to remove the charge for the rear offside cargo door dent. I am not saying that the dent has or hasn't occurred prior to the vehicle being collected; just that with a delay and unaccounted for mileage, a dent can happen quite quickly, and shows no real signs of ageing, so I agree that it's fair for MBFS to remove this charge.

That brings me to the two remaining damage charges. These are for damage to the alloy wheel, and damage to the roof.

The alloy wheel damage is clear. It's well outside of MBFS's guidelines for fair wear and tear and also the industry standard British Vehicle Rental and Leasing Association guidelines (BVRLA). These say that scuffs/scratches that total under 50mm of the circumference of the rim are acceptable. The investigator has said there is more than 50mm of damage, and my view is that the damage is considerably more than 50mm. The photo shows damage around more than a quarter of the rim.

I've then considered whether this damage might have occurred in the one month period between the van being collected and being inspected. I'm not persuaded that this would be the case. The damage does not look fresh and is discoloured in many places. It also appears to potentially be from more than one incident, as there are damaged areas, then small undamaged areas, followed by more damage.

I'm satisfied that the discolouration of this damage shows that it is unlikely to be something that happened in the small number of miles or timeframe between collection and inspection. The vehicle was used by Mr S for around five years, and then there was a one month delay before it was inspected. On balance, I am satisfied that this damage most likely occurred during the period Mr S had possession of the van, and so I'm not upholding this part of his complaint. This has been charged fairly by MBFS.

And finally, that brings me to the damage to the roof. The roof is showing signs of fairly extensive damage. There are areas of discolouration, dents, and also areas where the topcoat and basecoat have been penetrated and rust patches have formed. There are also several areas where the topcoat of paint appears to be missing but not the base coat.

This damage would fall well outside of BVRLA or MBFS fair wear and tear guidelines. BVRLA guidelines say that scratches of 25mm or less where the primer or bare metal is not showing are acceptable provided they can be polished out. But in this instance, there are several scratches and whole patches where the topcoat has been penetrated, and bare metal is showing.

So, I have to consider the likelihood of when this damage has occurred. Mr S believes the van was undamaged when it was collected and has also said that he believes rust can form within 24 hours. MBFS have said that while rust can form immediately, it takes time to form to the state it is and the colour it is here, and they don't accept this might have been a recent issue with the van.

In considering the dents, the same issue applies as above. These might have been done quite recently, and it's impossible to tell, they show no signs of ageing. So, I've focused on the discolouration and the rust patches evident in forming my decision.

There is a patch on the roof along one of the ridges with considerable damage. There are discoloured patches of paint, which look like they are potentially bird lime damage or similar. Some of these patches have missing paint through to the metal, and some have patches of rust which have formed. I'm not persuaded that this damage could have formed in the short period of time between the van being collected, and its inspection. The patches appear to have begun as discolouration and then developed into missing patches of paint work before some of those patches have begun to rust. I think it's most likely that this would have developed over many months or even years, not a few weeks.

I also think it's important to recognise that these patches on the roof of the vehicle may not have been evident to Mr S. The roof would be difficult to examine, and there seems to be several areas of damage in different areas of the roof.

This kind of damage doesn't feel likely to have been caused in a short period of time after

the van was collected. It's in several places, with paint missing, dents and rusted patches. On the balance of probability, it's most likely that this damage has developed over a much longer time period. As such, I'm not upholding this part of the complaint. This damage charge for the roof has been charged fairly.

Overall, this leaves two charges for damage which I am satisfied are fair. The alloy wheel charge of £79.15, and the damage to the roof, charged at £418.53. The other charge that was remaining, for £208.02 for the dent to the cargo door, should be removed.

Mr S has indicated to us that both himself and his wife have been made redundant after the pandemic. I was sorry to hear this and would remind MBFS of the need to treat him fairly and with forbearance with regards to the remaining £497.68 owing on this invoice.

Putting things right

MBFS should remove the charge for £208.02 for the cargo door dent from the invoice for damages. This will leave Mr S with a total charge for damages to be invoiced of £497.68.

My final decision

I am partially upholding this complaint, and direct Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance to put things right as described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 January 2023.

Paul Cronin
Ombudsman