

The complaint

Mr W is unhappy with the end of contract charges applied by Mercedes-Benz Financial Services UK Limited (MBFS), following the return of a car under a hire purchase agreement.

What happened

MBFS. He paid a deposit of £7,000 and the agreement was for £32,213 over 49 months; with 48 monthly payments of £419.06 and a final optional purchase payment of £18,000. Mr W ended the agreement early and returned the car in May 2022.

When the agreement was terminated the car was returned to MBFS, and it was inspected for any damage. MBFS said the compressor tyre kit was missing when the car was returned, and they invoiced Mr W £130 for this. He was also invoiced £130 for damage to the left-hand front door inner shut.

Mr W wasn't happy with the charges, and he said there was no compressor tyre kit supplied with the car. And he didn't think the damage to the door shut was sufficient to warrant any charge. So, he didn't think MBFS were acting fairly by charging him for this. While MBFS agreed with Mr W about the damage to the door shut, waiving the charges, they thought they were acting fairly by charging for the missing compressor tyre kit.

Mr W wasn't happy with MBFS's response, so he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said he'd see no evidence that the compressor tyre kit was with the car when it was supplied to Mr W. He also said that, because the car was returned with the same tyres as it'd been supplied with, it was unlikely that Mr W had used the compressor tyre kit, as this would usually result in a tyre being changed. Finally, the investigator said that, because the car was supplied with run flat tyres, the compressor tyre kit couldn't be used, so he thought it was unlikely that it would've been supplied.

Given this, the investigator said that MBFS should remove the £130 charge.

MBFS said that the car supplied to Mr W didn't have run flat tyres, so *"a method for potential roadside puncture will always be supplied."* They've also said that, if the compressor tyre kit wasn't there, the car would've failed its pre-delivery inspection. They've also provided a list of the things the car should've had as standard, which includes a 'Tyrefit pack', and a photograph of where the compressor tyre kit would usually be stored.

Mr W said that his complaint was actually about the *"behaviour [of MBFS] and the amount of time that I have wasted on phone calls, making explanations and having to drive the car back and forth to the dealers on many occasions for fixes that I should never have had to do."* He also said that, as MBFS have now agreed to waive the £130 charge for the compressor tyre kit, *"I am actually looking for compensation for the way I was treated as a customer and also for steps to be put in place at [MBFS] so as to not act in this way to anyone else."*

Because neither party agree with the investigator, this matter has been passed to me 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 have 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 what I consider was good industry practice at the time. Mr W was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

However, before I address the issue at hand, I think it would be useful if I were to explain what I can and can't look in to. The Financial Ombudsman Service is only able to consider complaints that have been raised with the financial business, and where the financial business has been given the opportunity to respond to those complaints.

When Mr W initially raised his complaint with us on 25 July 2022, he said that he *"had multiple issues with the car, it was returned 7 times in the first 11 months of ownership with major faults and repairs."* He also said that, once he'd agreed to return the car to MBFS, he was *"then harassed for payments almost on a 24 hour basis, phone calls, letters etc. [and MBFS] have not addressed my complaint regarding this."*

However, I've seen a copy of the complaint Mr W raised with MBFS on 20 May 2022. In this email he raised the issue of the £260 damages charges he'd been asked to pay - £130 for the missing tyre compressor, and £130 *"for a tiny scratch on the passenger side inner door frame."* And this is what MBFS responded to in their email of 26 May 2022.

I've not seen anything to show me that Mr W raised any issues with MBFS about any problems he'd had with the car while it was in his possession. Nor have I seen that he raised the amount of time he'd needed to spend to try and resolve these issues. As such, I can't fairly say that MBFS have had the opportunity to address this. Because of this, I'm unable to consider these points within my decision. And my decision will instead only focus on the complaints Mr W has raised with MBFS – the £260 damages charges.

The agreement Mr W electronically signed in May 2021 clearly set out MBFS's Vehicle Return Standards (VRS). And the VRS clearly said that, once the car had been returned, it would be inspected for damage at a Defleet Centre. The VRS also clearly said that *"you must return the vehicle together with everything originally supplied with the vehicle."* As such, if the car was originally supplied with a compressor tyre kit, then Mr W needed to return this with the car. And, if he didn't, then VWFS were entitled to charge him for this.

When the car was collected from Mr W on 3 May 2022, the collection agent conducted an initial inspection of the car. The report produced states that the tyre sealant was *"not applicable."* Given this, I'm satisfied that a compressor tyre kit wasn't present when the car was collected. The car was further inspected at the Defleet Centre on 6 May 2022. Following which Mr W was invoiced for the missing compressor tyre kit (as well as for the now waived damage to the door shut).

However, I've considered whether the car was originally supplied with a compressor tyre kit for Mr W to return. While I've noted MBFS's comments about the delivery inspection, I'd expect to see some form of handover document when Mr W was supplied with the car, and that this indicates the compressor tyre kit was present. But I've not been supplied with this.

I've also considered the circumstances under which Mr W may've used the compressor tyre kit. As MBFS have confirmed, this would be used when the car suffered a roadside puncture. And, where this had happened, I'd expect to see the tyre either repaired or replaced when the puncture was eventually fixed. However, there's no indication in the report by the Defleet Centre that the tyre was either replaced i.e. different make of tyre and/or different wear to the remaining tyres; or repaired.

Given the above, I think it's more likely than not that the compressor tyre kit wasn't supplied with the car rather than it being used by Mr W. As such, I think it's fair for MBFS to waive this charge.

Mr W has also referred to being harassed and bullied by MBFS for payment of the damage charge. And he's supplied a number of emails raising this with MBFS and explaining why he doesn't think it's fair he's being asked to pay this before he's had a "*final resolution*" to his complaint.

It's clear from what I've seen that Mr W disputed the £130 charge for the tyre compressor kit. As such, I accept that he would find any attempts to collect the fee unwanted and unacceptable. However, from what I've seen, MBFS only chased Mr W for payment *after* they'd issued their complaint response letter, and *before* Mr W brought his complaint to us for investigation.

As such, MBFS had issued their final resolution to Mr W's complaint. And, while he didn't accept this, MBFS were entitled to ask him to pay their invoice. And doing so doesn't mean they were harassing or bullying him. So, in these circumstances, I'm satisfied that MBFS acted reasonably in pursuing their fees. And I won't be asking them to compensate Mr W for doing so.

Putting things right

MBFS should waive the £130 charge for the missing compressor tyre kit.

My final decision

For the reasons explained, I uphold Mr W's complaint. And Mercedes-Benz Financial Services UK Limited must follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 11 January 2023.

Andrew Burford
Ombudsman