

The complaint

Mr N complains about damage charges and an excess mileage charge Mercedes-Benz Financial Services UK Limited ("MBFS") is asking him to pay.

What happened

In June 2018 Mr N entered into a hire purchase agreement ("agreement") with MBFS for a new car costing £34,295.

Everything else being equal, Mr N undertook to return the car to MBFS at the end of the agreement and to pay it 14.4p (inclusive of VAT) for each mile he had travelled over 48,000 and a sum (to be calculated) for damage identified as being outside fair wear and tear.

On 7 June 2022 Mr N returned the car with a mileage of 54,366.

On 8 June 2022 the car was inspected by a dealership. The inspection report noted a mileage of 54,366 and identified the following damage and estimated repair costs:

• screen front (chipped)	£32.00
• bumper rear (scratched)	£210.00
• seat base cover RHF (scratched)	£174.10
• total	£416.10

The report states Mr N wasn't present at the time of this inspection, but Mr N submits he was.

On 11 June 2022 Mr N says he received a final summary of charges letter from MBFS.

On 12 June 2022 the car was inspected by MBFS' nominated defleet centre. The inspection report noted a mileage of 54,370 and identified the following damage and estimated repair costs:

• screen front (cracked)	£247.70
• wheel LHF (preparation marks)	£110.00
• wheel LHR (preparation marks)	£110.00
• wheel RHR (preparation marks)	£110.00
• wheel RHF (preparation marks)	£110.00
• bonnet (dented)	£260.00
• bumper front (scratched)	£210.00
• door LHF (dented)	£260.00
• door LHR (dented)	£260.00
• bumper rear (scratched)	£210.00
• bumper rear centre chrome moulding (excessive damage)	£128.00
• seat base cover RHF (scratched)	£174.10
• door aperture seal RHF (damaged)	£48.48
○ total	£2,238.28

Mr N wasn't present at the time of this inspection.

On 25 June 2022 Mr N says he received a final summary of charges letter from MBFS.

On 8 July 2022 Mr N paid MBFS £948.70, broken down as follows:

• excess mileage (6,366 miles @ 14.4p)	£916.70
• chipped front screen	£32.00
○ total	£948.70

On 14 July 2022, after Mr N had complained about the sum MBFS was seeking from him, MBFS sent him a final response letter ("FRL"). Under cover of this FRL MBFS made reference to an inspection report dated 26 June 2020, where damage charges totalling £1,624.18 had been noted, and that what it was seeking from Mr N was £1,084.92, or £1,034.92 if paid immediately.

It's my understanding that the cost of £1,624.18 can be broken down as follows:

• screen front (cracked)	£247.70
• bonnet (dented)	£260.00
• bumper front (scratched)	£210.00
• door LHF (dented)	£260.00
• door LHR (dented)	£260.00
• bumper rear (scratched)	£210.00
• bumper rear centre chrome moulding (excessive damage)	£128.00
• door aperture seal RHF (damaged)	£48.48
○ total	£1,624.18

It's my understanding that the cost of £1,084.92 can be broken down as follows:

• bonnet(dented)	£260.00
• bumper front (scratched)	£210.00
• door LHF (dented)	£260.00
• bumper rear (scratched)	£210.00
• bumper rear centre chrome moulding (excessive damage)	£128.00
• door aperture seal RHF (damaged)	£48.48
○ sub-total	£1,116.48
• excess mileage (on 6,369 miles)	£917.14
• excess mileage charge paid by Mr N(on 6,366 miles)	(£916.70)
• chipped front screen cost paid by Mr N	(£32.00)
○ sub-total	(£31.56)
○ total	£1,084.92

On 19 July 2022 MBFS sent Mr N an invoice for £2,033.62 broken down as follows:

• bonnet (dented)	£260.00
• bumper front (scratched)	£210.00
• door LHF (dented)	£260.00

• bumper rear (scratched)	£210.00
• bumper rear centre chrome moulding (excessive damage)	£128.00
• door aperture seal RHF (torn)	£48.48
○ sub-total	£1,116.48
• excess mileage (6,369 miles @ 14.4p)	£917.14
○ total	£2,033.62

On 21 September 2022, and unhappy with MBFS continued request for payment from him, Mr N complained to our service.

Mr N's complaint was considered by one of our investigators who came to the view that MBFS should waive the dented bonnet charge of £260, but it could reasonably seek recovery of the other damage charges totalling £856.48. She didn't comment on the excess mileage charge.

Both parties disagreed with the investigator's view, so the complaint was passed to me for review and decision.

I issued a provisional decision on this case in December 2022. In summary I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

First, I would like to point out I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

I would also point out that where the information I've got is incomplete, unclear, or contradictory, I've to base my decision on the balance of probabilities.

damage charges

Mr N signed his agreement in June 2018. The terms of the agreement set out that the car must be returned at the end of the agreement in line with the vehicle return standards. It confirms that an inspection will be carried out by trained technicians and goes on to set out the acceptable return standards, beyond which it allows MBFS to charge for the costs of either repairing and/or refurbishing the car, or the cost of the consequent reduction in the sale value of the car.

It's clear from the agreement that Mr N was responsible for returning the car in good condition. So, I've considered whether the charges applied by MBFS were fair and reasonable.

The first thing I've considered is Mr N's argument that the damage, identified in the second report, could have occurred after the car had been inspected for the first time and after it was no longer in his custody and was no longer his responsibility.

I've considered the type of damage identified in the second report (which MBFS is seeking payment for and which wasn't identified in the first report) and the likelihood this damage occurred between 7 and 22 June 2022.

Now I accept I can't say for certain that Mr N is wrong in his submission. But given the nature of the identified damage, that Mr N had travelled over 54,000 miles in the car and only three or four further miles were added to the odometer between the two inspections, I find on the balance of probabilities that the damage MBFS is seeking payment for was present when Mr N first returned the car and was simply not picked up by the first inspector.

Given what I say above, I will now go on to consider whether it's fair for MBFS to continue seeking recovery from Mr N the damage charges it's seeking the recovery of. In doing this, I will consider the MBFS vehicle return standards ("VRS"), supplied to Mr N with his agreement and also available online. Along with the vehicle return standards set out in the agreement, there are industry standard guidelines published by the British Vehicle Rental and Leasing Association (BVRLA) which set out what is considered to be fair wear and tear in respect of a vehicle. So, I've also considered these in deciding what it's fair for MBFS to charge on return of the car.

MBFS are seeking from Mr N the following damage charges:

bonnet (dented)	£260.00
bumper front (scratched)	£210.00
door LHF (dented)	£260.00
bumper rear (scratched)	£210.00
bumper rear centre chrome moulding (excessive damage)	£128.00
door aperture seal RHF (torn)	£48.48

bonnet (dented)

For dents, the VRS says minor dents under 13mm are acceptable, this increases to 15mm in the BVRLA standards. For scratches, the VRS says that any scratching of paintwork that has penetrated to the base coat and can't be polished out is outside of fair wear and tear. In the BVRLA guidelines it talks about any scratches under 25mm being acceptable unless the primer/bare metal is showing.

Having considered the photograph(s) provided in support of this damage I'm satisfied that regardless of whether this damage should be described as a dent or a scratch it's through the topcoat. This is outside fair wear and tear.

bumper front (scratched)

For scratches, the VRS says that any scratching of paintwork that has penetrated to the base coat and can't be polished out is outside of fair wear and tear. In the BVRLA guidelines it talks about any scratches under 25mm being acceptable unless the primer/bare metal is showing.

Having considered the photograph(s) provided in support of this damage I'm satisfied that there is at least one scratch to the bumper which is over 25mm and through the topcoat. This is outside fair wear and tear.

door LHF (dented)

For dents, the VRS says minor dents under 13mm are acceptable, this increases to 15mm in the BVRLA standards. For scratches, the VRS says that any scratching of paintwork that has penetrated to the base coat and can't be polished out is outside of fair wear and tear. In the BVRLA guidelines it talks about any scratches under 25mm being acceptable unless the primer/bare metal is showing.

Having considered the photograph(s) provided in support of this damage I'm satisfied that regardless of whether this damage should be described as a dent or a scratch it's through the topcoat. This is outside of fair wear and tear.

bumper rear (scratched)

For scratches, the VRS says that any scratching of paintwork that has penetrated to the base coat and can't be polished out is outside of fair wear and tear. In the BVRLA guidelines it talks about any scratches under 25mm being acceptable unless the primer/bare metal is showing.

Having considered the photograph(s) provided in support of this damage I'm satisfied that there is at least one scratch to the bumper which is over 25mm. This is outside fair wear and tear.

bumper rear centre chrome moulding (excessive damage)

For mouldings, the VRS says that discoloured, loose, cracked, distorted, gouged or split mouldings that require replacement aren't acceptable. In the BVRLA guidelines it talks about scuffs and scratches of 25mm or less being acceptable provided the moulding isn't broken, cracked or deformed.

Having considered the photograph(s) provided in support of this damage I'm satisfied that this moulding is deformed to such an extent replacement is appropriate. This is outside fair wear and tear.

door aperture seal RHF (torn)

For apertures, the VRS says torn aperture seals aren't acceptable. In the BVRLA standards guidelines it talks about scratches that reflect normal use being acceptable.

Having considered the photograph(s) provided in support of this damage I'm satisfied that this aperture is clearly torn/split. This is outside fair wear and tear.

Overall, I'm satisfied that all of the six items above fall outside of the VRS fair wear and tear guidelines provided to Mr N when he took out the agreement. I'm also satisfied that they fall outside of industry guidelines for fair wear and tear, provided by BVRLA. As such, and subject to what I say below, I'm satisfied that MBFS can fairly and reasonably charge for these. And for the avoidance of doubt I would add that I'm satisfied that the sums MBFS are seeking in this respect, again subject to what I say below, are both fair and reasonable.

excess mileage

Having considered what both parties have said and submitted, I'm satisfied that MBFS is entitled to charge Mr N £916.70 for excess mileage calculated on 6,366 miles (54,000 less 54,366) at 14.4 pence per mile. It isn't entitled to charge any other sum in this respect, for example £917.14 calculated on 6,369 miles (54,000 less 54,369) at 14.4 pence per mile.

It's my understanding that Mr N has already paid MBFS £916.70 in this respect so MBFS should treat this liability as being fully settled.

other matters

It's my understanding that Mr N has paid MBFS £32 for what was identified as a chip in the windscreen in the first inspection report. Now given that MBFS isn't seeking recovery of this sum, and for the avoidance of doubt I think this is the correct thing for it to do, this sum should be treated as a credit towards the damage charges I've found (above) MBFS can fairly and reasonably charge for.

I've thought about whether Mr N has been caused any distress and inconvenience as a result of what MBFS has, or hasn't done, in this case. And having done so I think Mr N has been caused some.

In my view MBFS' communications haven't been as clear as they could have been. For example, I note that MBFS has continued to seek payment from Mr N for 6,369 excess miles, rather than 6,366, that the first inspection report makes reference to the wrong vehicle registration and MBFS' FRL makes reference to an inspection report undertaken on 26 June 2020. And for this I find MBFS should pay Mr N £100 which it should treat as a credit towards the damage charges I've found (above) it can fairly and reasonably charge for.

MBFS responded to my provisional decision to say it accepted it.

Mr N responded to my provisional decision to say he didn't accept it. In summary he said:

- The car was inspected on 7 June 2022 by a dealership, not 8 June 2022.
- He had the car inspected by two agents prior to returning the car to MBFS. Neither agent identified any unrectified damage outside reasonable fair wear and tear.
- From his own experience cars aren't treated particularly carefully once returned by a consumer to the custody of a business or its agents.
- He is honest, trustworthy and honourable.
- He isn't a serial complainer.
- Although he can accept that one or two areas of damage noted in the second inspection report might not have been picked up by the dealership, or his own appointed agents prior to the cars return, he doesn't accept that several areas of damage wouldn't have been picked up.
- The damage charges, even if he was to accept them, don't reflect the true cost, or loss, to MBFS.

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 would like to thank Mr N for his substantive response to my provisional decision. But having considered that response very carefully I'm not persuaded Mr N has added anything that would cause me to change my provisional findings. However, for the sake of completeness, I would make the following comments:

I don't doubt Mr N's honesty, trustworthiness or honour and I accept that he isn't a "*serial complainer/moaner*".

I accept that the car was returned on 7 June 2022 and an inspection of it carried out by a dealership on the same date. When making reference to 8 June 2022 what I should have said was this was the date recorded on the inspection report by that dealership.

I accept, as I said in my provisional decision, that I can't say for certain that Mr N is wrong in his submission that the 'additional' damage highlighted at the second inspection may have occurred after he returned the car over to the custody of MBFS or its agents, especially in the light of the first inspection and report and what Mr N says were two inspections he had undertaken himself prior to the car's return to MBFS.

But I still remain of the view that given the nature of the identified damage, that Mr N had travelled over 54,000 miles in the car and only three or four further miles were added to the odometer between the two inspections, on the balance or probabilities the damage MBFS is seeking payment for was present when Mr N first returned the car and was simply not picked up by the first inspector (or Mr N's own appointed agents).

I think it's also worth pointing out that despite the second inspection report highlighting ten items of damage not noted in the first inspection report (or any reports obtained by Mr N) and one item of damage at an increased cost (compared to the first inspection report), MBFS only went on to seek recovery from Mr N the 'cost' of five of the former and none of the latter.

Finally, I remain satisfied that the sums MBFS are seeking in respect of damage are both fair and reasonable and I see no good reason to direct MBFS to reduce these sums.

My final decision

My final decision is that Mercedes-Benz Financial Services UK Limited must:

- treat the excess mileage charge it's seeking recovery of as being fully paid by Mr N
- reduce the sum of £1,116.48 it's seeking the recovery of from Mr N, for damage, by £132, bringing this sum down to £984.48.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 31 January 2023.

Peter Cook
Ombudsman