

The complaint

Mr B has complained about the charges that Mercedes-Benz Financial Services UK Limited, trading as MBFS, applied when he handed back a car he had acquired under a hire agreement.

What happened

In July 2019, Mr B entered into a hire agreement with MBFS to acquire a brand-new car. The agreement was for approximately 35 months. Mr B handed back the car in July 2022, and MBFS asked him to pay around £2,085 for damages to the car. This was for damage to the car that MBFS considered to be outside of their Vehicle Return Standards (VRS).

Mr B said that, before he returned the car, he had some repairs done via an insurance claim. Mr B said that MBFS are saying that the repairs completed were not up to standard. Also, he said, that he had contacted the repair shop that did the repairs and they said they would be willing to rectify the repair standard upon inspecting the car themselves. But Mr B said that MBFS told him that it's too late to return the car which he thinks is unfair. He said that it seems MBFS want the car back looking like new and are not fair in what they deem to be fair wear and tear in a three-year-old car.

In August 2022, MBFS wrote to Mr B and said that, as per their VRS, when a car is returned, an inspection will be carried out and if there is damage that falls outside their VRS they send out an invoice for the damage charges. MBFS listed the levied charges and said that, due to the damage on the report, Mr B was charged a total of £2,085.37.

In this correspondence, MBFS also said that they provided a copy of their VRS to Mr B at the start of the agreement, so they said he had ample opportunity to familiarise himself with them and have the repairs carried out at his own cost before returning the car. They have also said that, as Mr B had repairs carried out under his insurance policy at a garage that wasn't a manufacturer approved repairer, these repairs were not carried out to their VRS. And that after the car is collected, at the end of the contract, it can no longer be returned to Mr B. MBFS explained to Mr B that if he's not able to make a payment for the damage due to his financial situation he can call their dedicated department which may be able to offer an affordable plan for him.

Unhappy with MBFS's response Mr B brought his complaint to our service.

Our investigator thought the complaint should be upheld in part. He thought that it was fair for MBFS to charge for all the listed damage on the inspection report except for the charges relating to:

- Interior Screen – Chipped
- Offside Front Wing – Scratched
- Nearside Rear Door – Poor Repair
- Interior odour

MBFS agreed with the investigator, but Mr B disagreed, so, the complaint has been passed to me to decide.

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 considering what is fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

Mr B acquired the car under a hire agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. Mr B's agreement with MBFS sets out that he needs to maintain the car in a condition which is consistent with the VRS and, if he does not look after the car properly, he will be responsible to compensate MBFS for the cost of repairs.

British Vehicle Rental & Leasing Association (BVRLA) also set out industry guidance on what is considered fair wear and tear standards. So, I've taken this guidance into account along with the MBFS's VRS, when deciding whether MBFS acted fairly and reasonably in the charges they applied. I've also taken into account the age and mileage of the car when it was returned.

When Mr B acquired the car, it was brand-new, so I think it's reasonable to consider the BVRLA standards when deciding whether the damage is outside of reasonable wear and tear. Since the car was brand new when acquired by Mr B, most likely, it was in a perfect condition, and free from minor defects. With that said, the car, most likely, had no scratches or damage. So, I reviewed the inspection report to see if the damage on the car was outside of fair wear and tear.

Front Bonnet – chipped

The BVRLA guidance sets out that chips of 3mm or less in diameter are acceptable provided they are not rusted. A maximum of four chips on any panel, six chips per door edge and eight chips on any forward-facing panel are permitted. MBFS's VRS state that any chipping of paintwork that (e.g. chips caused by stones flying off public road surfaces), provided that they do not penetrate the vehicle base coat nor show signs of corrosion, can be attributed to normal usage. From the pictures provided in the inspection report, I can see that there are at least eight chips present and that these have penetrated the base coat. So, I consider this damage to be representative of damage that's outside of fair wear and tear.

Front Bumper Painted and Rear Tailgate – Poor Previous Repair

The BVRLA guidance sets out that obvious evidence of poor repair, such as flaking paint, preparation marks, paint contamination, rippled finish or poorly matched paint, is not acceptable. MBFS's VRS state that previous body repairs and paint rectification will not be considered acceptable if there is evidence of poor colour match, ripples, preparation marks, visible overspray, masking lines or excess dirt in paint. It also says that excess paint chips, which detract from the overall appearance of the car or panel, are not acceptable. From the pictures provided in the inspection report, I can see that there is evidence of a rippled finish,

so I consider this damage to be representative of damage that is outside of fair wear and tear.

Front Bumper Unpainted – Damaged

The BVRLA guidance sets out that there should be no rust, corrosion, or discolouration on any painted area, including painted bumpers, body mouldings and mirrors. MBFS's VRS state that discoloured, loose, cracked, distorted, gouged or split bumpers, and mouldings that require replacement, plastic welding or painting are not acceptable. The pictures in the report show that there is discolouration on the bumper, so I consider this damage to be representative of damage that is outside of fair wear and tear.

Nearside Front Door Interior Sill/Step and Offside Front Door Interior Sill/Step – Scratched

The BVRLA guidance sets out that scratches on treads, sills and seals that reflect normal use are acceptable. MBFS's VRS state that light surface scratches not through the top coat which can be removed by polishing/touch up, are acceptable. From the pictures I can see that there are scratches that have gone through the top coat. So, I consider this damage to be representative of damage that is outside of fair wear and tear.

Nearside Rear Wheel Alloy Painted and Offside Front Wheel Alloy Painted – Scratched and chipped

The BVRLA guidance sets out that scuffs up to 50mm on the total circumference of the wheel rim and on alloy wheels are acceptable, but that any damage to the wheel spokes, wheel fascia, or hub of the alloy wheel is not acceptable. MBFS's VRS sets out that minor scuffing or damage under 25mm to the car alloy, or steel rim edge, or wheel face are acceptable. The pictures in the inspection report show that there are numerous chips and there are scratches that are most likely exceed 25mm. So, this damage is also representative of damage that is outside of fair wear and tear.

Offside B Post Inner, Offside Rear C Post Inner, Offside Front Door and Offside Rear Door – Scratched

The BVRLA guidance sets out that surface scratches of 25mm or less where the primer or bare metal is not showing are acceptable, provided that they can be polished out. A maximum of four surface scratches on one panel is acceptable. MBFS's VRS sets out that light surface scratches not through the top coat, which can be removed by polishing/touch up are acceptable. The pictures in the inspection report show that there are scratches through the top coat. And on some of the panels there are more than four surface scratches. So, I consider this damage to be representative of damage that is outside of fair wear and tear.

Offside Rear Door Interior Offside Aperture – Scratched

The BVRLA guidance sets out that scratches on treads, sills, and seals that reflect normal use are acceptable. MBFS's VRS state that damaged paintwork down to bare metal and aperture seals that are torn are not acceptable. From the pictures I can see that the aperture is torn so, I consider this damage to be representative of damage that is outside of fair wear and tear.

Rear Boot Floor – Damaged

The BVRLA guidance sets out that torn or split floor coverings and damaged surrounding trim panels are not acceptable. MBFS's VRS state that torn rubber aperture seals and paint scratched down to the bare metal are not acceptable. The pictures in the report show that

there are scratches to the paint through to the bare metal, so, this damage is also representative of damage that is outside of fair wear and tear.

I think, most likely, all the mentioned above damages are more than fair wear and tear considering the circumstances. So, I'm satisfied its fair and reasonable for MBFS to charge for these damages as per the inspection report. And the actual charges themselves don't seem unreasonable.

I'll now consider some damage that I don't think is outside of fair wear and tear for which MBFS initially wanted to charge Mr B. I know that MBFS have agreed to remove these damage charges after our investigator issued her opinion, but for completeness I will consider these below.

Interior Screen – Chipped

The BVRLA guidance sets out that damage in excess of 10mm in the driver's line of vision (a vertical strip of 290mm wide centered on the steering wheel) or in excess of 40mm elsewhere in the area swept by the car's wiper blade is not acceptable. MBFS's VRS state that chips on windscreen, which are less than 5mm, providing they do not obscure the driver's line of vision to a maximum of two chips per windscreen (MOT standards) are acceptable. From the pictures in the inspection report I can see that there is a chip present, but the evidence doesn't show whether this chip is above 5mm. In addition, this chip doesn't seem to be in the in the driver's line of vision. So, I don't think it's fair for MBFS to charge Mr B for this damage.

Offside Front Wing – Scratched

The BVRLA guidance sets out that surface scratches of 25mm or less, where the primer or bare metal is not showing, are acceptable provided they can be polished out. A maximum of four surface scratches on one panel is acceptable. MBFS's VRS sets out that light surface scratches not through the top coat, and which can be removed by polishing/touch up, are acceptable. From the pictures in the inspection report I can see that there is potentially a scuff which, most likely, can be polished out. Also, there is no scratch present. So, I don't think this is representative of damage that is outside of fair wear and tear, and I don't think it would be fair for MBFS to charge Mr B for this.

Nearside Rear Door – Poor Repair

The BVRLA guidance sets out that obvious evidence of poor repair, such as flaking paint, preparation marks, paint contamination, rippled finish, or poorly matched paint is not acceptable. MBFS's VRS state that previous body repairs and paint rectification will not be considered acceptable if there is evidence of poor colour match, ripples, preparation marks, visible overspray, masking lines, or excess dirt in the paint. It also says that excess paint chips, which detract from the overall appearance of the car or panel, are not acceptable. But from the picture in the inspection report I can't see enough that would persuade me that, most likely, there is evidence of a previous poor repair, so I don't think it would be fair for MBFS to charge Mr B for this.

Interior – Odour

The BVRLA guidance sets out that the interior upholstery and trim must be clean and odourless with no burns, scratches, tears, dents, or other staining. MBFS's VRS doesn't mention that the car needs to be returned odourless. It may be that, when taking into consideration the BVRLA's guidance, the car's interior odour was beyond fair wear and tear,

but it seems that MBFS's standard is more lenient. So, I don't think it's fair and reasonable for Mr B to be charged for this as MBFS's VRS hasn't been breached.

I know that Mr B feels very strongly that the repair shop which completed the insurance repairs, should've been allowed to rectify some of the damage mentioned above. Mr B said that the car was with MBFS for a few weeks, so there was ample time for the car to be given back to him to get it rectified by the repair shop that completed the insurance repairs. So, he feels that it is unfair that he is penalised because of an alleged poor repair. But Mr B's agreement with MBFS sets out that he needs to maintain the car in a condition which is consistent with the VRS. And the agreement explains that when he returns the car, any damage that breaches these standards will be his responsibility. So, any repairs that were needed had to be completed before he returned the car and it would not be fair and reasonable for MBFS to be responsible for any damage that is considered outside of fair wear and tear, as mentioned above.

Whilst I realise that my decision will come as a disappointment to Mr B, looking at all the evidence available to me, I think, on balance, it was fair and reasonable for MBFS to charge him for some but not all the damages - as explained and detailed above.

MBFS explained to Mr B that if he is not able to make a payment for the damage due to his financial situation, he can call their dedicated department which may be able to offer an affordable plan for him – I think this is fair and Mr B should take them up on this offer, if he needs to.

Putting things right

For the reasons given above, Mercedes-Benz Financial Services UK Limited trading as MBFS should:

- Remove the damage charges relating to the Interior Screen, Chipped Offside Front Wing, Nearside Rear Door, and the ones levied for odour, as detailed above.

My final decision

My final decision is that I uphold this complaint and direct Mercedes-Benz Financial Services UK Limited, trading as MBFS, to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 April 2023.

Mike Kozbial
Ombudsman