

The complaint

Ms W complains about a motor finance agreement she had with Mercedes-Benz Financial Services UK Limited (MBFS). Ms W exercised her right to hand the vehicle back early but is unhappy that MBFS has applied additional charges at the end of the contract relating to damage to the vehicle. Ms W disputes some of the damage and believes the charges imposed are excessive.

To resolve the complaint Ms W would like MBFS to reduce or waive the damage charge.

What happened

The background to this complaint and my provisional findings were set out in my provisional decision of 24 January 2023. A summary of which is as follows:

In 2017 Ms W took out a hire purchase agreement with MBFS for a vehicle. The vehicle was new at that time and in return for paying the monthly rentals Ms W was able to use the vehicle. As is common, the hire purchase agreement included a number of terms, two of which related to the maximum mileage Ms W could travel and a requirement on Ms W to be responsible for any repairs.

The hire purchase terms also included MBFS's 'vehicle return standards' and these set out expectations and requirements relating to the condition of the vehicle. I'll refer to these in more detail later, but they essentially set out what would be considered fair wear and tear on a vehicle when it is returned, and what level or degree of damage would go beyond fair wear and tear. The terms set out that where there has been a failure to take 'reasonable care' of the vehicle Ms W will have to pay either the cost of repairing the vehicle or the cost of the consequent reduction in the sale of the vehicle.

In accordance with legislation, the hire purchase agreement also includes a voluntary termination clause, which allows Ms W to return the vehicle before the contract comes to an end. Ms W exercised her right to voluntary termination and the vehicle was collected by MBFS's agent. A vehicle inspection report was completed on 5 November 2020 at Ms W's property and several areas of damage were recorded. The mileage of the vehicle was recorded as 54,808 and the vehicle was then taken back.

MBFS sent an invoice dated 2 December 2020 to Ms W setting out £1,404.26 was now due. This was broken down as:

- £1,155 of damage charges
- £207.72 of excess mileage charges
- £41.54 of VAT.

Ms W complained to MBFS about the damage charges as she felt these had not been applied fairly. MBFS responded to the complaint and set out why it believed that most of the charges had been applied fairly. MBFS did accept that a £35 charge for damage to a door should not apply and reduced the invoiced amount by £35. MBFS did not however consider that the remaining damage charges were applied unfairly so would not reduce the invoice

further.

Ms W remained unhappy with MBFS's response and referred her complaint to our service. The complaint was considered by two investigators and the second investigator ultimately found that the damage charges had been fairly applied. The investigator did however note that MBFS had agreed to remove the charges relating to excess mileage.

Ms W did not accept the investigator's conclusions, so the complaint has been referred to me for consideration.

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.

Based on the evidence presented so far, I am planning on upholding Ms W's complaint in part.

Ms W's hire purchase agreement with MBFS was regulated consumer credit agreement and because of that our service is able to consider complaints about the agreement. Ms W is unhappy about the damage charges applied when the vehicle was returned. I have therefore looked at whether or not MBFS has acted fairly in applying a charge for damage and then if the amount charged is reasonable, considering the level or extent of damage.

The vehicle return standards are set out in the hire purchase agreement terms and conditions. Before referring to the specific conditions, I think it is worth reminding the parties of the intention of these terms and why they are common in these types of motor finance agreements. In most motor finance agreements, consumers are responsible for damage that has occurred to the vehicle while it's been in their position. If a vehicle is returned to the finance provider at the end of the hire period, or sooner, the condition of the vehicle will very likely impact on the value of that vehicle. A vehicle with substantial damage will understandably generate a lower value when compared to a similar vehicle without damage. Consumers should not be avoiding repair costs by simply returning a vehicle that has suffered damage and if a finance provider then loses out because of that it would not be unreasonable for it to seek recovery of its loss.

But when the finance provider sells the vehicle after it is returned it will often be around 3 years old and will have travelled a number of miles during this time. So the vehicle would have reduced in value and it would not be unreasonable to expect the vehicle to be showing signs of wear and tear. While possible, it is unlikely in most cases that a vehicle that has been driven for three years will be in a showroom new condition. Having regard for the age and mileage travelled of the vehicle when it is returned is also relevant in my view, with a younger lower mileage vehicle being expected to show less wear and tear when compared to an older and higher mileage vehicle. When buying a used vehicle it is again expected that the vehicle will show signs of wear and tear and the bodywork of the vehicle is unlikely to be perfect. In this case, the vehicle was approximately three and half years old and had travelled 54,808 miles when returned, so it would be expected to show some signs of wear and tear.

The often difficult task is agreeing what would actually be considered fair wear and tear and what is more substantial damage that should have been repaired before the vehicle is returned. To assist with making that decision MBFS includes the vehicle return standards within the terms of the hire purchase agreement and this lists various examples of acceptable or unacceptable levels of damage.

When considering whether MBFS has treated Ms W fairly by applying damage charges I

have first looked at the damage and the vehicle return standards to determine if the specific damage in this case exceeds the permitted levels of damage. If unacceptable damage, I'll then consider whether the amount charged for the repairs is reasonable.

Wheel left hand rear

The inspector's guide which is shown in the picture of the wheel appears to highlight three small marks on the wheel spoke. Each of these appear to be less than 25mm in length. Minor scuffing under 25mm to the wheel is acceptable and does not appear to therefore exceed the acceptable level of damage. I appreciate that the three, less than 25mm, marks would in total exceed 25mm but there is nothing in the vehicle return standards that indicates this is a consideration or requirement. I am not currently persuaded the specific damage is excessive, or therefore chargeable damage.

Bumper rear

The image here appears to show the scratch to the bumper is considerably over the 50mm length of acceptable damage as set out in the vehicle return standards.

Wing left hand front

The damage here appears to have been caused by brushing by a bush or hedge. Light surface scratches not through the top coat, which can be removed by polishing or touch up are deemed acceptable, according to the vehicle return standards.

The scratches are in my view light and do not appear to be through the top coat. It is not however clear from the image whether the scratches can be removed by polishing / touch up. It's not actually clear what 'touch up' specifically refers to but I consider it is likely to involve some minor attention, which is perhaps not too dissimilar to polishing. Considering the image and the very light nature of the scratches, I am not persuaded at present that the damage cannot be removed by 'touching up' the area. Because of this, I am not currently persuaded the damage is actually excessive when considering the vehicle return standards requirements.

If MBFS wishes to provide further details as to why this area cannot be touched up, as set out in the vehicle return standards, I will reconsider this further.

Door left hand front

The image of the left hand door does appear to show a small dent and this does look to be greater than the 13mm in diameter that is permitted in the vehicle return standards. This does therefore appear to exceed the size of permitted dents.

C post left hand

The images here do appear to show a small dent. But the images do not however demonstrate the dent exceeds the 13mm permitted size under the Body and paint section of the vehicle return standards. There is a separate section for Door aperture tread area and it is not clear if MBFS believe this should be where the damage is measured against. Acceptable damage under this section is noted to be A minor amount of scuffing to the door and luggage area tread and sills. Unacceptable damage is damaged paintwork down to bare metal... Considering the very small dent, which has not damaged the paintwork, I do not believe this exceeds either section of the vehicle return standards.

It is also possible looking at the image that the inspector is looking to draw attention to two

or three small scratches. But the report refers to the damage being 'dented' rather than 'scratched' so it appears that the damage does relate to a dent.

C post right hand and B post right hand

Images for these areas do show small dents and these have both penetrated through the paint and into the bare metal. These areas are again likely to fall into the Door aperture tread area section of the vehicle return standards and as the bare metal is exposed do exceed the permitted level of damage.

Door right hand front

I appreciate MBFS has removed the charge for this damage but having reviewed the images, which do not in my view actually show the damage, I am somewhat surprised it was invoiced initially anyway.

Having considered the images and video provided from the inspection I am not currently persuaded that all of the damage that MBFS has invoiced for actually exceeds the level of damage permitted within the vehicle return standards.

I should add that I am grateful for the efforts Ms W, and her husband, went through in providing their own video footage of the vehicle to show the condition it was in when it was being returned. This is helpful when considering certain types of damage but where the damage is very small in size, as is the case here, it is very difficult to accurately show any damage through video recordings and without close up images. Having considered the images from the inspection report I am satisfied there is damage (apart from the right hand front door as referred to above) to the car and this was there when inspected prior to returning the vehicle.

Having determined that it would not be unreasonable for MBFS to charge for some of the damage to the vehicle I have next considered the amount of charges MBFS is looking to apply and whether this is reasonable. The charge applied by MBFS is intended to cover any costs in repairing the vehicle or any loss in value through selling the vehicle with excessive damage. MBFS's approach appears to be to charge for each separate scratch or dent but repairing 2 scratches to a vehicle is unlikely to cost twice as much as repairing one scratch to a vehicle, especially where these are minor scratches not requiring a full panel respray. I'm not therefore persuaded considering the circumstances here that even if all of the damage would be considered chargeable that the amount MBFS has charged would be reasonable.

I've calculated that £575 is the charge that would apply to the areas of damage that I have set out above to be chargeable. This includes £210 for the scratched bumper, £35 for the dented front left door, £260 for the scratch to the left C post and £70 for the scratched right B post.

Looking at the charges for the different individual areas of damage it is difficult to understand how these charges have actually been calculated. I appreciate MBFS may argue these are the costs of each repair, but some damage appears to be very similar but attracts a significantly different charge. For example, the damage to the left C post and right B post look very similar in the size of the dent/scratch and that the bare metal is exposed. One has attracted a £260 charge and one has attracted a £70 charge and it is not clear why this would be the case.

It is possible that the charges reflect that it would not cost twice as much to repair two identical scratches, as I have referred to above, because the time and materials used are

unlikely to simply double. But looking at what MBFS was initially looking to charge, it does not appear that multiple or additional repairs are charged at a lower rate after the first repair cost has been applied.

It is not clear if MBFS did actually get the vehicle repaired prior to selling, but if it did I consider it unlikely that the cost would have been £575 considering the extent of damage that I consider to be chargeable. If MBFS submits an invoice setting out what repair costs it did incur, relating specifically to the damage that goes beyond fair wear and tear and what I have set out as chargeable above, I will be happy to consider this cost further.

It is not uncommon for vehicles to simply be sold straight at auction without being repaired and it is likely that even allowing for the age and mileage of this vehicle, it would have achieved a lower price because of the damage. The price paid for a vehicle on any given day at auction is impacted by a number of factors, not simply the condition of the vehicle, so it would be difficult to know the exact impact of the damage on the price achieved for this vehicle. It is again accepted by the industry that vehicles will show differing levels of damage and this is why secondary valuation sites will often list different prices reflecting the average, or above/below average condition.

Having carefully thought about what damage I consider would be reasonable to charge for, the likely repair costs of that damage and the economies of scale around multiple repairs, or the actual reduction in value, I consider a reasonable sum for Ms W to pay in this instance would be £500.

I also believe that Ms W has been put to some trouble and upset in having to question the damage charges, which I have found should not have been as high as initially invoiced. I would again remind MBFS that it initially accepted that it should not have charged for the damage to the right hand front door but it only removed this charge after Ms W complained. Considering the level of inconvenience Ms W has been put to I think MBFS should pay an additional £100 to reflect this. If Ms W has not yet paid the damage charge, the £100 can be used to reduce the remaining £500 charge I consider to be reasonable. Should Ms W prefer to pay the £500 and then be paid the £100 I would ask that she clarifies this when responding to my provisional decision.

If Ms W has already settled the damage charge MBFS should pay the £100 directly to Ms W and refund the £655 (£1,155 - £500), plus interest at 8% simple per year from the date of payment to the date of settlement.

If MBFS has recorded any late, missed or adverse information on Ms W's credit file related to unpaid damage charges this should be removed, providing Ms W settles the £500 (or £400 if the £100 is offset) now required within thirty days of accepting my final decision.

Finally, MBFS has agreed to waive the excess mileage charge that was initially applied and as it has agreed to do this I would expect it to ensure this is also waived. I do not therefore consider it necessary to refer to that in any detail here.

My provisional decision

My provisional decision is that I uphold Ms W's complaint and subject to any further submissions from the parties here, direct MBFS to settle the complaint as set out above.

MBFS responded to my provisional decision and said it was willing to remove the £260 charge for the C post LH. It referred to the vehicle return standards in respect of the wheel and believes this is still chargeable damage. In relation to the damage to the wing left hand

front, it noted the damage was over 25mm and also referred to 21 paint chips. MBFS said it was willing to accept £895 as a final charge for the damage.

Having considered MBFS's response I asked the investigator to put further questions to MBFS. In summary, MBFS was asked for evidence of Ms W being sent a copy of the pricing summary, which sets out the cost of different types of repairs. It was noted that the inspector made no mention of the 21 paint chips and MBFS was asked more about the ability to polish or touch up the scratches. It was highlighted what was set out in the vehicle return standards that were attached to Ms W's agreement and these were different to the more recent version MBFS had referred to. MBFS was asked to demonstrate where Ms W had agreed to the change in the vehicle return standards.

MBFS responded to say that it was willing to remove the charge for the alloy wheel now. It still disagreed about the wing left hand front and believes the damage is excessive. MBFS refers to the numerous scratches and a dent in the swage line and it believes the damage cannot be removed by polishing or a touch up pen. MBFS also noted that the inspector would have been unable to refer to multiple points of damage on the same panel or area.

MBFS did not provide any evidence of Ms W accepting the revised vehicle return standards, or anything to show Ms W was provided with a copy of the pricing summary – setting out how the different damage repair costs are calculated.

Ms W responded to my provisional decision and said that in order to bring the matter to a conclusion, she would be happy to accept the £400 charge.

The complaint has now been passed back to me so that a final decision can be issued.

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 come to similar conclusions, for broadly the same reasons around most of the areas of damage. There is one exception to this, and this relates to the damage to the left hand front wing.

In my provisional decision I did not dispute that there was damage to this area, nor did I dispute that the damage appeared to be multiple scratches. My reservations around a charge being applied to this area of damage were more in relation to MBFS's vehicle return standards wording and this noted that damage that could be polished out or touched up would not be chargeable. I explained that it was not clear that this damage could not be polished out or touched up and because of this I was not convinced it was chargeable.

MBFS has now said that 'touching up' is done by a pen. This is not uncommon when repairing small paint damage to a car. This seems a reasonable explanation and what I believe was intended in the vehicle return standards where it refers to touching up. The damage is clear to the paint work and although it does not appear to have gone through to the metal, it is still very noticeable and affects a reasonably large area that requires some repair.

Having now considered what MBFS has said about the process of touching up this area I accept that this is unlikely to provide a satisfactory repair to the paint work. The number and length of the scratches is simply too large to be able to be touched up in this way.

It is for this reason that I am now persuaded it would be reasonable for MBFS to charge for

this damage. It is possible, considering the size of the damaged area that a full panel respray may be required and in view of this, the £210 repair charge does not seem unreasonable.

MBFS now accepts that damage to the wheel and C post left hand is not chargeable. For completeness, my view of the other areas of damage and whether these are chargeable or not has not changed since my provisional decision.

Ms W has not responded to my comments regarding any of the specific areas of damage but has said that she is willing to pay £400 to bring the matter to a conclusion. Having reconsidered the circumstances of this case, and in particular the damage to the left hand front wing, I now consider MBFS should be permitted to charge no more than £610 for the damage repair costs. This is broken down as the £500 costs, as set out in my provisional decision for the bumper, door LHF, C post RH and B post RH. Plus, the £210 cost relating to the wing and then subtracting the £100 for the trouble and upset caused to Ms W.

I appreciate this is more than the £400 Ms W said she was happy to accept to bring the matter to a conclusion. But as I have explained above, the damage to the wing is substantial and having considered MBFS's explanation around the possible repair process, it would not be unreasonable to charge for this damage.

Putting things right

In order to settle this complaint MBFS should reduce the charge it has asked Ms W to pay in relation to the damage so that this is no more than £610. If it has not already done so, MBFS should also ensure the excess mileage charge is removed, as it has previously agreed to do.

My final decision

My final decision is that I uphold Ms W's complaint in part and direct Mercedes-Benz Financial Services UK Limited to reduce the damage charge to no more than £610.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 1 March 2023.

Mark Hollands
Ombudsman