

The complaint

Mr M's complaint is about charges he's been asked to pay by Mercedes-Benz Financial Services UK Limited, who I'll call "MBFS".

What happened

I issued my provisional decision on this complaint in April 2023. An extract from that provisional decision is set out below.

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, whilst I know it will disappoint Mr M, I don't think MBFS have been unreasonable here and I'm not asking them to take any action. I'll explain why.

Mr M acquired his car under a hire agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The terms of the finance agreement held Mr M responsible for keeping the car in good condition. He would be responsible for any damage if the car wasn't returned in the correct condition.

The process

It's for MBFS to decide their processes and it's for them to decide how they identify any excess wear and tear that could be chargeable under the agreement.

Here they have decided to complete two inspections; the second inspection was completed when Mr M wasn't present.

MBFS aren't members of the British Vehicle Rental and Leasing Association (BVRLA), the organisation that provide the industry guidelines on what is considered fair wear and tear when a car is returned at the end of a lease. But I think it is reasonable to expect MBFS to be mindful of that industry guidance.

The BVRLA guidance explains that whilst some companies may provide a condition report on collection of the car, others may complete the final inspection off site.

So, I don't think it was unreasonable for MBFS to complete a further and final inspection.

The BVRLA guidance recommends that drivers (or nominated representatives) are present when vehicles are collected. It says that all readily apparent damage and wear will be documented when the vehicle is collected, and the driver will be given an opportunity to agree with the condition report.

Mr M was given an opportunity to attend the first inspection, and to agree to the condition report, but that initial inspection didn't identify all of the damage that was noted during the

second inspection.

He wasn't given an opportunity to attend the second inspection and I've therefore thought about whether this disadvantaged him and whether the results would have been different had he been present. I don't think they would have been as I think the inspector has clearly evidenced the damage that was present and the gap between the first and second inspection was only a few days.

The inspector's independence

Mr M says the company MBFS used to inspect the car were not independent and should have been. MBFS used a company that many of their competitor's also use, to inspect cars when they are returned at the end of their lease period. They are independent of MBFS but, regardless of their independence I think, as I've explained above, that the photographic evidence is sufficient for MBFS to have considered whether damage exceeded the fair wear and tear guidance. So, I don't think Mr M has been disadvantaged by MBFS's choice of inspection company.

Was it fair to apply charges if the damage wasn't going to be repaired?

The BVRLA guidance that I think MBFS needed to be mindful of says:

"Charges can still be applied at the end of the lease in cases where the leasing company decides for commercial reasons not to repair the damage..."

So, I don't think MBFS were unreasonable to apply charges where they could evidence damage was beyond normal wear and tear. Those charges would compensate them for any reduction in sales value they would be likely to incur as a result of that damage.

Insurance claim

It was for Mr M to decide whether to raise a claim with his insurer for the damage. As I'm persuaded the damage was there before the inspections took place it was possible for Mr M to raise that claim before he returned the car. I'm not persuaded that MBFS's inspection processes denied him that opportunity, or that he was in any way disadvantaged by that inspection.

The damage charges that remain

MBFS have their own Vehicle Return Standard (VRS) and although MBFS aren't members of the BVRLA I think it's only fair to consider that standard in tandem with the VRS when considering if the damage in the inspection reports can fairly be considered to be beyond normal wear and tear and chargeable.

Damage charges that I think are merited

Bonnet dented £260.00

The VRS says the dent is acceptable if less than 13mm and the BVRLA is a little more lenient. It suggests dents up to 15mm are reasonable as long as the paint surface isn't broken.

The inspectors photograph shows the dent to be in excess of both standards and paint has also chipped off. I think MBFS have therefore been reasonable when making a charge for it.

Bumper front centre chrome moulding excessive damage £155.00

The VRS says:

“Discoloured, loose, cracked, distorted, gouged or split bumpers and mouldings that require replacement, plastic welding or painting are not acceptable.”

The BVRLA guidance says:

“...scratches of less than 25mm are acceptable provided the moulding is not broken, cracked or deformed”.

The photographs show a scratch to the chrome moulding that looks a little over 25mm in length.

I'm persuaded that MBFS were therefore reasonable to levy a charge.

Bumper front scratched £210.00

The BVRLA guidelines state:

“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.”

And the VRS says:

“Any chipping and scratching of paintwork that has penetrated the base coat and/or has caused corrosion of any kind which cannot be polished out is not acceptable”.

There's extensive scratching on this panel, well in excess of either of the standards. The charge has therefore been reasonably made.

Mr M says the damage wasn't visible in first inspection. There are no photographs that would show the area in sufficient detail, but I'm persuaded, on balance, the damage was more likely to have been present during the first inspection than to have been created in the very limited time between the first and second inspections.

Door right hand rear non-professional repair £210.00

The VRS says:

“We can't accept any repairs that don't match the original finish and specification.”

And

“Paintwork chips caused by general use, as long as they don't reach the base coat, expose the bare metal or show signs of corrosion are acceptable. Discolouration and corrosion are not acceptable.”

The BVRLA guidance says:

“Obvious evidence of poor repair, such as flaking paint, preparation marks, paint contamination, rippled finish, or poorly matched paint not acceptable”

The photographs show that the paintwork is rippled and there appears to be a discoloured poor repair on the door.

I think the damage is in excess of the relevant standards and a charge has therefore been fairly made.

Number plate front broken £15.00

I can't see that the VRS specifically refers to the number plate, but the BVRLA guidance says:

"The vehicle's number plate should be intact..."

The number plate is cracked, and having reviewed the first inspection video, I think that crack is also visible at around 10 seconds in. I think a charge has therefore been reasonably applied.

Wheel left hand front and right hand front rim damage £110 each

The VRS says:

"Damage greater than 50 millimetres to the rim, or any damage to the wheel spokes, fascia or hub of the alloy wheels are not acceptable."

The BVRLA guidance says:

"Scuffs up to 50mm on the total circumference of the wheel rim and on alloy wheels are acceptable".

Both rims show scuffing in excess of 50mm, and charges have therefore been reasonably made.

Damage charges that I don't think are merited

Bumper moulding rear scuffed (unpainted) £50.40

The VRS says:

"Small scuffmarks are okay, if they don't affect the overall appearance of your car. But, on the bumpers, these must be smaller than 75 millimetres..."

The BVRLA guidance says:

"scuffs or scratches of 25mm or less are acceptable"

The unpainted moulding has some light scuffing that's no more than 20mm long.

That's well within the MBFS's own standard and also acceptable under the BVRLA standard. I don't think MBFS have therefore been fair to make a charge for this damage and they should remove it.

Parking sensor rear scratched £64.00

MBFS rely on a section of the VRS that says:

“Body panel misalignment not consistent with manufacturer's finish is not acceptable.”
The BVRLA guidance explains that parking sensors should be working and that “scuffs or scratches of 25mm or less are acceptable”.

I haven't seen evidence that the parking sensor wasn't working, and I don't think the section of the VRS that MBFS rely on can fairly be attributed to this damage as there's no bodywork misalignment. The scuffing shown in the inspector's photographs is very minimal and not more than 25mm, and I don't think there are photographs or video evidence, in the first inspection report, that show this area in sufficient detail. I don't think a charge has therefore been fairly applied, and I think MBFS should remove it.

My provisional decision

I'm expecting to partially uphold this complaint and to tell Mercedes-Benz Financial Services UK Limited to revise the final invoice, removing the charges they have made for damage to the bumper moulding rear scuffed (unpainted) £50.40 and parking sensor rear scratched £64.00.

Comments from the parties and my thoughts on those comments

MBFS accepted my provisional decision, but Mr M still didn't think it was fair. His detailed response ran to several pages. It isn't practical to list all of those comments here but I have considered them all. 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.

Mr M said, *“The penalty clause which allows Mercedes to unilaterally specify a loss to themselves out of proportion to the actual loss they might suffer is, I believe, an unfair term of contract and unenforceable in law”*. I'm not persuaded it was unfair for MBFS to recover costs even if that hadn't incurred them. I say that because the industry guidance provided by the BVRLA says it isn't and I don't think it would be right to penalise MBFS for following that guidance.

Mr H said he didn't know the first inspector's *“true purpose”* and if he had he would have shadowed him. As I've explained in my provisional decision, I don't think Mr M was disadvantaged by that as I think it likely the damage I've listed was present at that time.

With regard to the front number plate Mr M said he failed to see how it could be missed in the first inspection but identified in the second. I've explained in my provisional decision that I think there is evidence of damage in both inspections.

Mr M suggested that MBFS were *“double counting (the) scratch and chrome moulding”* but I think they're two distinct units and that MBFS were entitled to do that. I don't agree that the photographs don't evidence that damage.

Mr M also disputed the rippling of the paintwork on the rear door, but I stand by my provisional decision on that damage and for the same reasons.
Mr M asked me to look at other cases that he said were reported on the internet, where overcharging was endemic in cases concerning returned lease cars. I'm considering the merits of *his* complaint here and I don't think it would be reasonable to consider other issues, with other vehicles.

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 considered Mr M's response, I haven't found any reason to change my provisional decision.

Putting things right

My provisional decision therefore becomes my final decision on this complaint.

My final decision

For the reasons I've given above I uphold this complaint in part and tell Mercedes-Benz Financial Services UK Limited to revise the final invoice, removing the charges they have made for damage to the bumper moulding rear scuffed (unpainted) £50.40 and parking sensor rear scratched £64.00.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 June 2023.

Phillip McMahon
Ombudsman