

The complaint

Mr R complains about the charges Mercedes-Benz Financial Services UK Limited ("MBFS") applied when he returned a vehicle at the end of his hire agreement.

What happened

Mr R entered into a hire agreement in June 2019 for a term of three years. He says he's unhappy with the end of contract charges that were applied when he returned the vehicle. Mr R told us:

- After he'd returned the vehicle, MBFS sent him an invoice for damages that amounted to £3,605.49. He disputed the charges with MBFS and asked it to send him evidence of the damages that it had recorded;
- MBFS sent him photographs that had been taken by the third-party collection agent, but he says that most of the damage in the photographs wasn't present when the vehicle was collected;
- the vehicle was driven across the country, and it took MBFS nearly a month to invoice him for the damage, and he says the damage occurred in this timeframe – after the vehicle had been collected from him;
- he accepts some of the itemised damage on the invoice was caused by him, but most of it was not, and some of the claims of poor paint repairs are for areas on the vehicle that he had not previously had repaired;
- MBFS tried to charge him for cleaning a panel because of bird droppings but it conceded this was excessive and it removed this charge after he first complained;
- MBFS levied charges for damage to the boot, but the nature of the vehicle and his usage of the it means that this damage was inevitable. Moreover, Mr R says MBFS didn't provide any protection for the boot when he first hired the vehicle, so the damage was unavoidable;

Mr R says MBFS should revise its invoice to cover only the damage that was actually caused by him and the repair work that he had done that it deems to be of poor quality.

MBFS rejected this complaint. It said the vehicle was collected and inspected by an independent third party. MBFS said that following Mr R's complaint, it had reviewed the charges and agreed to remove the one related to bird dropping damage, and it reduced the invoice to £3,426.89.

MBFS said Mr R was told that *"A damage inspection will take place when your vehicle is returned to the Defleet site, and if there is damage on your vehicle that falls outside our Vehicle Returns Standards, we'll send you an invoice of the damage charges"*.

MBFS said its *Vehicle Returns Standards* ("VRS") document detailed the expected return condition of Mr R's vehicle. It said a copy of this was provided to Mr R when he first took out his finance agreement, and it was available online. So, it was satisfied that Mr R had had ample opportunity to familiarise himself with its fair wear and tear expectations and this also provided him with the opportunity to have any repairs carried out before the vehicle was returned and inspected.

MBFS said the other 22 charges had been raised correctly and these charges compensate it for any loss it might experience due to the cost of any work or repair or replacement which it reasonably considers necessary to restore the vehicle to the appropriate condition.

It noted that some of the charges related to poor repair work that Mr R had said had been undertaken via his insurance. But it said this repair work hadn't been completed to the required standard – further work needed to be undertaken to return the vehicle to the original specification and standard. It said Mr R could contact his insurance provider if he had been charged for paintwork that was now deemed to be substandard.

Mr R disagreed and brought his complaint to this Service. He provided an annotated copy of the invoice, marked up with his comments on each of the individual charges.

Our investigator looked at this complaint and said he thought it should be partially upheld, and he asked MBFS to remove a number of charges from the invoice. He explained he'd looked at the photographic evidence provided by MBFS and said he thought that, for a number of reasons, charges totalling more than £550 should be removed. He did go on to say that he'd found no evidence of any damage occurring after the car had been collected.

Mr R disagreed and he said he still felt aggrieved by the level of the remaining charges.

MBFS also disagreed with our investigator's opinion. And it provided further clarity and additional submissions on the charges that had been recommended to be removed; a recommendation with which it disagreed.

My initial conclusions are set out in my provisional decision from June 2023. In it I said I thought MBFS should remove four charges from the invoice it had sent Mr R and I explained my reasons for this as follows:

"The terms and conditions of the hire agreement, signed by Mr R, set out in some detail the acceptable return condition of the vehicle. They clearly set out what the acceptable conditions are, with examples, and what conditions are unacceptable. I've read this carefully, and I'm satisfied that Mr R was responsible for returning the vehicle in good condition, but the question is whether all the charges applied by MBFS are fair and reasonable.

MBFS's inspection identifies 23 areas of damage that it deems to be unacceptable - outside fair wear and tear. MBFS has already agreed to remove the charge in respect of bird droppings and the subsequent need to repaint the bonnet. So, I don't need to consider this charge any further.

Additionally, Mr R's annotated invoice confirmed his acceptance that he'd caused the damage in a further 8 areas itemised on the invoice. Again, as this damage isn't in dispute, there's no need for me to consider these items further.

With this in mind, I've focussed my findings on the remaining 14 itemised areas of damage where there remains disagreement between the parties. These are as follows:

1. MOT – insufficient cover left	£54.95
2. Nearside/Fuel flap – poor previous – small panel paint	£44.65
3. Offside/Front door – poor previous	£208.02
4. Nearside/rear/Quarter panel – poor previous	£208.02
5. Offside/Rear door – poor previous	£208.02
6. Offside/Rear quarter panel – poor previous	£237.44
7. Front bumper – scratched – full panel paint	£178.60

8. Offside/Front wing – damaged	£208.02
9. Rear/Boot – damaged	£832.08
10. Rear/Bumper – damaged	£281.59
11. Rear/Tailgate – damaged	£208.02
12. Rear/Tailgate – scratched	£178.60
13. Nearside/Rear/Quarter Panel – Stone Chip Decal missing	£35.47
14. Offside/Rear quarter panel – missing	£35.47

Fair wear and tear guidelines have been issued by the British Vehicle Rental and Leasing Association (BVLRA) and these are accepted as an industry standard in determining whether any damage goes beyond fair wear and tear. So, I've also taken these into account alongside MBFS' Vehicle Return Standards when deciding what is fair and reasonable for MBFS to charge Mr R.

The Vehicle Return Standards, signed by Mr R in June 2019 says, "...all cab and body exterior panels and internal trims to be free of damage".

The BVRLA guidance sets out the standard regarding fair wear and tear. The relevant guidance says:

- "Obvious evidence of poor repair such as flaking paint, preparation marks, paint contamination, rippled finish and ill-matched paint is not acceptable.
- Repaired chips, scratches and dents outside the fair wear and tear tolerance are acceptable provided the work is completed to a professional standard by repairers who can provide full warranty on their work.
- 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 scratches on one panel is acceptable.

I've looked very carefully at the photographic evidence that MBFS has provided, and I'm satisfied that some of the areas of damage identified do exist and that the damage is indeed outside fair wear and tear. So, I think these charges should apply. But there's also alleged damage that I've not seen persuasive evidence of and, subject to significantly clearer evidence, I don't think these charges should apply.

(1) MOT – Insufficient cover left - £54.95

Our investigator said this charge shouldn't apply. He said the vehicle was returned on 22 June 2022, and the vehicle's MOT wasn't due until 28 June 2022. He asked MBFS to remove this charge.

But the VRS is clear. It says that "the vehicle must be capable of passing a MOT test and have a valid test certificate, which has at least 6 months unexpired cover". It goes on to say that "vehicles with less than 5 months MOT cover remaining will be MOT tested and any costs incurred to pass the MOT test will be payable by you".

Mr R returned the vehicle with less than one week's MOT cover unexpired. Accordingly, I'm satisfied that this charge has been applied fairly.

- (2) Poor previous repair to nearside/fuel flap - £44.65 and
- (3) Poor previous repair to offside/front door – £208.02

Our investigator asked MBFS to remove the charges for these two items. MBFS said that the paint finish following repair work was substandard. It said "signs of poor previous repairs due to warping seen from the reflection and paint quality which is not consistent with the original finish of the vehicle"

I've looked very carefully at the five photographs submitted by MBFS and I don't find them persuasive – I simply cannot see anything that evidences a poor paint finish. So, unless clearer and stronger evidence is provided, I'm going to ask MBFS to remove both these charges.

- (4) Poor previous repair to Offside/Rear door - £208.02*
- (5) Poor previous repair to Offside/Rear quarter panel - £237.44*
- (6) Poor previous repair to Nearside/rear/Quarter panel - £208.02*

I've looked carefully at the 19 photographs submitted by MBFS in support of its claim that the paint finish following repair work was substandard. I'm satisfied that there's evidence of warping and a rippled finish in the paintwork, and accordingly I think these charges have been applied fairly.

- (7) Scratched Front bumper - £178.60*
- (8) Damaged Offside/Front wing - £208.02*
- (9) Damaged Rear/Boot - £832.08*
- (10) Damaged Rear/Bumper - £281.59*
- (11) Damaged Rear/Tailgate - £208.02*
- (12) Damaged Rear/Tailgate - £178.60*

MBFS has provided a large number of photographs to evidence the damage to these six areas. I'm satisfied in each of these six areas, that the damage and scratches are clearly visible and exceed both the VRS standards for fair wear and tear and the BVRLA guidance too.

I've noted Mr R's comments about his usage of the vehicle and the failure of MBFS to provide protection for the boot, but I don't think this makes a difference. There's no indication that the VRS standards were to be varied according to a customer's planned or actual vehicle usage, and I can't see that MBFS intended to provide boot protection, but then failed to do so. So, taking everything into account, I think it's fair for MBFS to charge Mr R for damage in these areas.

- (13) Nearside/Rear/Quarter Panel – Stone Chip Decal missing - £35.47*
- (14) Offside/Rear quarter panel – missing - £35.47*

MBFS clarified these two charges do not relate to damage but are instead charges for something that is "missing". It says, "We believe a protective cover on both sides should be present". And it's provided two photographs that it says provides evidence of something that isn't there. But what it hasn't provided is any evidence of what the missing things actually look like, or indeed that they were likely present at any time prior to the vehicle's collection and inspection. So, because of this I'm not persuaded that it's fair for MBFS to apply these charges.

Finally, I've considered Mr R's inference that some of the damage took place after the vehicle was collected from him, but I just don't think this is likely. I say this because MBFS appointed an independent third party, one that is recognised in the industry, to conduct an

assessment. And although Mr R says that when the vehicle was collected, he was told there was no damage to report, I think it's more likely than not that the nature of the identified damage wouldn't have been apparent until the vehicle was thoroughly examined later".

I said I was satisfied that the majority of the charges MBFS asked Mr R to pay were applied fairly and in line with both its own VRS standards and the relevant industry guidance, but I was going to ask it to cancel the following charges and adjust its invoice accordingly:

- | | |
|---|---------|
| 1. Nearside/Fuel flap – poor previous – small panel paint | £44.65 |
| 2. Offside/Front door – poor previous | £208.02 |
| 3. Nearside/Rear/Quarter Panel – Stone Chip Decal missing | £35.47 |
| 4. Offside/Rear quarter panel – missing | £35.47 |

I asked each party to let me have any further information that they'd like me to consider.

Mr R provided no further comments.

MBFS accepted that charges 3. and 4. (above) should be removed; it acknowledged that it *"wasn't in a position to provide an example of what should have been"*. But it asked me to look again at charges 1. and 2. and it asked me to compare the photographs to the ones for the *"offside/front/door"*; the rippling effect from a poor respray would be more apparent.

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 see no reason to depart from the conclusions I reached in my provisional decision.

I've looked again at the photographs submitted by MBFS – it didn't provide any further evidence. Although its instructions were confusing – it asked that I compare the offside front door with the offside front door – I've looked at the paintwork in the other photographs as the basis of my comparison.

Having done so, I'm still unable to see persuasive evidence of a poor paint finish or rippling in the paintwork. And, as a result, in addition to the two charges it has now agreed to remove, I require it to remove the charges for

- | | |
|---|---------|
| 1. Nearside/Fuel flap – poor previous – small panel paint | £44.65 |
| 2. Offside/Front door – poor previous | £208.02 |

Putting things right

Given all of the above, I'm satisfied that the majority of the charges MBFS asked Mr R to pay were applied fairly and in line with both its own VRS standards and the relevant industry guidance, but I'm going to ask it to cancel the following charges and adjust its invoice accordingly:

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| 1. Nearside/Fuel flap – poor previous – small panel paint | £44.65 |
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My final decision

My decision is that I require Mercedes-Benz Financial Services UK Limited to remove the four charges I've identified from Mr R's end of contract charges invoice.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 10 August 2023.

Andrew Macnamara
Ombudsman