

The complaint

Ms S complains Mercedes-Benz Financial Services UK Limited (MBFS) has unfairly charged her end of contract damage charges

What happened

I issued an earlier provision decision on this matter and for clarity I repeat it here.

On 31 January 2018, Ms S entered into a contract hire agreement with MBFS for a brand-new vehicle. The agreement was for an initial rental payment of £1,161.58 followed by 35 monthly payments of £193.60.

The agreement came to end on 7 February 2021. The car was collected by BCA, MBFS's collection agents on 8 February 2021.

On 18 February 2021, MBFS sent Ms S an invoice for damages outside of fair wear and tear totalling £752.40 and unhappy with this, she complained. Ms S explained she was aware of damage to the rear door, as a motorcycle had fallen over onto the vehicle, but she adamantly refuted the other damages, having checked the vehicle over carefully before collection. She also queried why a congestion charge had been acquired in an area the vehicle shouldn't have been in after collection and where the vehicle had been kept overnight as it hadn't been taken straight to the inspection site.

On 19 April 2021, MBFS issued its final response. I didn't uphold Ms S complaint, stating the inspection report showed damage outside MBFS Vehicle Return Standard (VRS) and BCA had confirmed this was present at collection. It did, however, later acknowledge the congestion charge was not Ms S's responsibility and refunded the cost.

Dissatisfied, Ms S brought the complaint to this service. She asked for all the charges except the rear door to be waived.

An investigator looked into things for Ms S. She accepted no photographic evidence was taken at collection and that there were no measurements available on the photographs taken at inspection to determine the exact extent of the damage. But she felt that as there were more than three dents on the offside/rear/quarter panel and a dent exceeding the permitted size on the nearside rear door, these exceeded fair wear and tear. She noted Ms S accepted the damage to the offside rear door.

She reached her view on a balance of probabilities as the vehicle had been driven over 22,000 miles by Ms S and only 94 miles by the collection driver, although she accepted the vehicle had been kept overnight at a private address before being taken to the inspection site she felt the damages were more likely than not present beforehand and so she didn't uphold Ms S's complaint.

Ms S vehemently disagreed. She disputed the damage, other than that of the offside rear door was present. She questioned where the vehicle had been driven to and from and where

it had been stored overnight. She had been wrongly charged for the congestion charge and this has subsequently been withdrawn by MBFS. She asked for an ombudsman review.

My provisional findings

I reached a different view to that of the investigator and issued a provisional view to allow both parties the opportunity to provide further submissions for my consideration before I issue my final decision.

I said I was very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

In considering what is fair and reasonable, I take account of the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider having been good industry practice at the relevant time.

The agreement in this case, is a regulated consumer credit agreement – therefore this service can consider a complaint relating to it. There are various rules and protections about how hire purchase agreements operate, including those set out in the Consumer Credit Act 1974 ("CCA") The CCA is therefore relevant law in this complaint.

I explained that where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Ms S said the vehicle was collected from her home address at around 15.20. This is supported by the photograph of the mileage clock at around 15.14. The collection note states a time of 17.52, which cannot be correct, not least because the congestion charge was recorded at 15.55. The collection notes also didn't identify any damage to the car at the point of collection. I said I appreciated that MBFS said this was a health and safety check but as the collection driver didn't take the vehicle directly to the depot, it raised concerns about where and when the damage occurred, especially as in this case, Ms S disputes all but the damage to the rear nearside door.

MBFS has said it has checked Google Maps and the additional mileage is consistent with the collection driver taking the car to his home address overnight and then to the depot. It confirmed there has been no personal use.

I said I had two concerns about this information. Firstly, I checked Google Maps and looked carefully at the route from Ms S's home to the postcode area given as the location for overnight storage. The most direct route does not account for the location of the congestion charge. In fact, for the vehicle to be in the vicinity of the congestion charge, the driver has taken a detour from the quickest route and notably one without tolls to one of a sort of loop the loop that took the vehicle into a congestion charge area. I said I couldn't see a plausible explanation for such a direction. My second concern was that there was no evidence as to the how secure the overnight storage was before the vehicle's onwards journey.

I said if the collection agent needs to take a vehicle from collection to an overnight stop at a location other than the depot, I would have thought it prudent to complete a collection inspection precisely, so this sort of dispute does not occur.

I said on the evidence I have seen I couldn't fairly say where or when the damage occurred. I said I wasn't of the view that on balance of miles driven the damage was caused prior to collection. There is nothing to suggest the damage to the vehicle has corrosion or any other marking to suggest it occurred at an earlier stage. The number of discrepancies on the collection note, the incorrect collection time, the subsequent congestion charge in area the vehicle did not need to be in, the overnight storage at a private location before the depot and Ms S's persuasive testimony lead me on balance to have concern about how and why the damage occurred, and so I said I didn't find it fair or reasonable to hold Ms S responsible for these damages.

Secondary to this, I said I looked carefully at the photographic evidence provided by BCA and I wasn't persuaded from the evidence that the damage outside of the rear door, already accepted by Ms S, falls outside of the guidelines for fair wear and tear. There are no clear measurements of the damages listed and the photographs are very reflective making the damage itself difficult to assess.

I said, in my view, Ms S should pay for the damage to the rear nearside door which she has accepted and MBFS should waive all other charges and should any adverse information be recorded on Ms S's credit file, it should be removed.

I gave both parties time to make any further submissions of any new evidence they wished me to consider before making my final decision.

MBFS asked for clarification of which charges they should waive as there are two charges detailed on the invoice pertaining to damage to the rear doors, specifically damage to the nearside and damage to the offside.

Ms S reiterated her understanding that the only damage she accepted was damage to the nearside rear door which was caused when a stationary motorbike fell against the nearside rear door.

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 thank both parties for their comments. From what I have received I haven't seen any information to cause me to reach a different conclusion and so it follows I have reached the same conclusion as that of my earlier provisional decision.

For clarification my provisional decision referred specifically to the damages outside of those accepted by Ms S. I said that secondary to Ms S's comments I had also looked closely at the photographic evidence and I hadn't been able to see any evidence that the damages fell outside of the fair wear and tear guidelines. This was in part due to poor lighting and reflection within the photographs making any damage difficult to assess. On this basis I said all charges other than that of the rear nearside door should be waived and a new invoice for the accepted damage which amounts to £209.54 raised.

My final decision

For the reasons I have given I uphold this complaint and I direct Mercedes-Benz Financial Services UK Limited (MBFS) to:

- Issue a new invoice for the damage to the nearside rear door (dent) for £209.54
- Waive all other charges
- Remove any adverse information from Ms S's credit file

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 27 April 2022.

Wendy Steele
Ombudsman