DRN-4482977

The complaint

S complains about the charges Mercedes-Benz Financial Services UK Limited ("MBFS") applied when it returned a van at the end of a hire agreement.

S is represented in its complaint. For ease of reading, any reference to S refers to the testimony of both S and its representative.

What happened

S entered into a 12-month hire agreement in November 2021. S says it's unhappy with the end of contract charges that were applied when it returned the van. S says it's unfair that MBFS is charging an additional daily amount because it returned the van late *and* also charging it for mileage over and above the agreed terms; it says this amounts to being charged twice for the same item. It's also unhappy with the damage that it's been charged for – it says the reported damage wasn't highlighted when the van was collected.

S told us that it had been unable to commence a new lease agreement, so it had held on to the van for around 40 more days after the hire agreement ended. It says MBFS agreed to this and said it'd be invoiced at a later date.

MBFS rejected this complaint. It said *"if you return your van at the end of your agreement, our third-party collection agent…will collect your vehicle. They'll complete a safety appraisal to make sure that your vehicle is safe to be driven away, please remember that this is not a damage inspection. This is why no damage is recorded at this point. 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 it was satisfied that the damage it had identified was clearly evidenced and had been charged in accordance with the *Vehicle Returns Standards.* And it confirmed that charges for damage totalling £2,327.72 remained payable.

MBFS also said S owed it £1,048.88 in respect of excess mileage – it'd driven the van further than was allowed under the terms of his contract; and a further £368.16 because it had not returned the van when the agreement ended; it'd kept it for 40 days longer than permitted.

S disagreed and brought a complaint to this Service.

Our investigator looked at this complaint and said he thought it should be upheld. He explained that the standard for what constitutes fair wear and tear is set out in the British Vehicle Renting Leasing Association (BVRLA) guidelines and his role was to decide whether the charges applied by MBFS through its *Vehicle Returns Standards* were fair and reasonable.

He said he'd looked at the hire agreement and the photographs submitted by MBFS to support its position and he thought the damage was both visible and outside the fair wear and tear guidance and, as a result, was chargeable.

But he did say that he didn't think it was fair for MBFS to charge S a fee for each day that the car was late being returned, whilst making no adjustment to the permitted mileage. And he asked MBFS to adjust the excess mileage charge to reflect the additional usage S had effectively paid for through the daily rate charge.

Both parties disagreed with this opinion, so the complaint comes to me to decide. MBFS said S had a defined mileage allowance, and it hadn't agreed a formal extension to the hire agreement. And because of this, both fees are applicable.

S accepted the reduction in the excess mileage charge but said that it didn't accept the charge in respect of damage to the van's roof; that damage had happened after the van had been collected by MBFS' collection agent.

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 all the evidence and testimony from both S and MBFS afresh, I've reached the same conclusion as our investigator and for broadly the same reasons. I'll explain why.

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

MBFS's inspection identifies four areas of damage that it deems to be unacceptable - outside fair wear and tear:

1.	Front bonnet – chipped	£178.60
2.	Offside sliding door – dents	£40.55
3.	Roof – dents	£2,062.58
4.	Missing service	£46.00

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*, which S signed in November 2021, when deciding what is fair and reasonable for MBFS to charge S.

Front bonnet, Sliding door and *Roof*

The *Vehicle Returns Standards* says: *"When the vehicle is returned to us, a Vehicle Standard Inspection will be carried out by trained technicians at the nominated Defleet centre".* So, I think it's clear that any damage to the van wouldn't be highlighted to S at the time it was collected. Damage could only be identified when the van was inspected and

assessed later. It goes on to say that all cab and body exterior panels and internal trims must be free of damage.

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

- *"Chips that are 8mm and less in diameter are acceptable…Maximum of four chips on any panel, six chips per door edge, and eight on any forward-facing panel".*
- *"Dents of 15mm or less in diameter are acceptable providing that the base metal is not exposed or rusted".*

MBFS' third-party inspection agent provided photographs of the areas concerned, and I can see they used the industry's recognised approach – zebra boards – to highlight areas of damage. Where there's no damage, the zebra board reflects straight, solid and parallel lines. But in this case, there's evidence of damage; the lines are no longer parallel highlighting where dents are present.

I've looked very carefully at the photographic evidence that MBFS provided, and I'm satisfied that the areas of damage identified exist, and are damage outside fair wear and tear. I can clearly see multiple chips across the front bonnet of the van. And there's clearly dents on both the sliding door and the roof of the van.

So, I think the charges for the damaged exterior have been applied fairly.

I've considered S's comments that some of this damage took place after the vehicle was collected, 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 S says that when the car was collected, none of the disputed damage to the roof was noted or highlighted, I think it's *more likely* than not that the nature of the identified damage wouldn't have been apparent until the van was thoroughly examined later at the defleet centre.

Missing service

The Vehicle Returns Standards say, *"The vehicle must be maintained in accordance with the manufacturer's recommendations".* And the BVRLA guidance has words to the same effect.

I've seen a photograph of a warning on the dashboard, indicating that the van was overdue a service at the point it was returned. And in the absence of any contradictory testimony from S, I'm satisfied that it's fair and reasonable for MBFS to levy a charge for the missed service.

Given all of the above, I'm satisfied that the damage charges MBFS asked S to pay were applied fairly and in line with both the agreement signed by S and the relevant industry guidance and that MBFS has acted fairly in respect of the damage charges it applied.

Excess mileage and late return

There's no dispute that S used the van for longer than was set out in the hire agreement, so I'm satisfied that it's fair and reasonable for MBFS to levy a charge under the circumstances.

S returned the van late – it should've been returned on 24 November, but S didn't schedule its collection until 3 January – some 40 days later than should've been the case. And it's not clear to me why it didn't contact MBFS and arrange a formal extension to the agreement.

The hire agreement doesn't specify what happens where the use of the van runs beyond the agreed term of the hire agreement without a formal extension; it simply doesn't explicitly cover circumstances such as these. So, in the absence of an agreed extension, S's continued use of the van incurred a daily charge calculated on the basis of his previous monthly payments.

I've thought about this carefully, and I think that calculating a charge along these lines is fair. This is because without an arrangement to formally extend the agreement, MBFS has simply rolled forward the cost of the existing agreement for the 40 extra days until the van was returned. And I think that a charge on this basis for S's ongoing and continued usage of the van isn't unreasonable.

S's hire agreement permitted the van to be driven 12,000 miles in the 12 months of the agreement. S exceeded its mileage allowance; when the van was returned, the van had been driven 16,337 miles – 4,337 miles more than under the agreement. And the agreement sets out the cost for each mile driven over and above the 12,000-mile limit.

But S says MBFS is 'double-charging'; it's being charged twice for the same thing. It says it's been charged a day rate for its continued usage of the van, but it's not been given an increased mileage allowance to account for this continued usage. I've considered this very carefully and having done so, I'm persuaded by what it says.

It seems to me that in charging S a day rate for his ongoing usage of the van, S would reasonably expect to be able to use the van, and in doing so, additional miles would be driven. The hire agreement did have a maximum permitted mileage for the first 12 months, so it doesn't seem unreasonable to conclude that in paying this day rate, S would have the benefit of some additional mileage for each of these additional days, as without this benefit, it would potentially be paying a fee for having the van with the possibility of being unable to drive it.

Our investigator suggested that MBFS should increase S's permitted mileage allowance from 12,000 miles for the 12-month agreement by a further 1,315 miles to take account of the additional 40 days rental that had been paid. MBFS should then only charge an excess mileage fee for the mileage over and above 13,315 miles. For the reasons I've given, I think this is the fairest remedy in the circumstances.

Putting things right

I'm going to uphold S's complaint and ask Mercedes-Benz Financial Services UK Limited to reduce its calculation of excess mileage by taking account of the additional 40 days' usage it charged to S.

Put simply, Mercedes-Benz Financial Services UK Limited is required to pro-rata the mileage allowance to take into account the additional 40 days' rentals paid. It should then reduce the excess mileage charge to take into account the increased mileage allowance.

My final decision

My final decision is that I uphold this complaint and require Mercedes-Benz Financial Services UK Limited to adjust its end of contract charges as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 28 February 2024.

Andrew Macnamara
Ombudsman