

The complaint

Miss M complains that the charges she is being asked to pay by Mercedes-Benz Financial Services UK Limited ("MBFS") following the rejection of her car, and the early termination of a hire purchase agreement, are unfair.

What happened

In July 2020, Miss M was supplied with a used car through a hire purchase agreement with MBFS. The agreement was over 48 months, with monthly repayments of £332.21 and an optional final purchase payment of £8,525. Mrs B also paid a deposit of £3,000. At the time it was sold, the car was around four years old.

Miss M has raised a previous complaint about the car not being of a satisfactory quality that has been decided by another ombudsman. He directed MBFS to accept Miss M's rejection of the car, and to terminate the hire purchase agreement. He directed MBFS to collect the car from Miss M. MBFS, in response to that decision, agreed to collect Miss M's car on 9 May 2023. Following an inspection of the returned car MBFS sent Miss M an invoice for £3,088.12 for damage to the car, and missing items such as the V5 document and spare key.

Miss M complained about the charges she was being asked to pay. She said that the return process wasn't sufficiently explained to her. And if she had been given better information Miss M says that she would have arranged for the repairs to be completed before the car was returned. When MBFS investigated Miss M's complaint it said it would remove the charge for the spare key as that had been added in error. But it said it thought the remaining charges were fair and that Miss M needed to pay them. Unhappy with that response Miss M brought her complaint to us.

Miss M's complaint has been assessed by one of our investigators. He thought that most of the charges that MBFS had levied were fair. But he thought that the charges that MBFS had asked Miss M to pay in respect of the worn tyres might have been due to the problems that led to her rejection of the car. So he thought that the charges for the worn tyres (but not those for the damage to the tyres or alloy wheels) should be removed from Miss M's invoice. And the investigator also thought there was no evidence of the damage to the flasher side repeater that MBFS had claimed for so asked for that charge to be removed too.

Neither Miss M nor MBFS accepted the investigator's findings. Miss M said that the final decision on the previous complaint had said she needed to pay nothing more on the agreement. And she repeated that she hadn't been made aware of the returns process or given chance to repair the car herself. She said that she still holds the spare key, that MBFS has said has been found, so concludes that MBFS might be lying about other aspects of the damage. MBFS accepted what the investigator said about the side repeater. But it says that Miss M had changed the tyres on the car, and that they hadn't been fitted correctly. So it thinks it more likely that was the cause of the tyre wear than any problems with the car.

So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Miss M accepts my decision it is legally binding on both parties.

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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Miss M and by MBFS. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

Miss M's complaint arises from issues with the return of a car supplied to her under a hire purchase agreement. Entering into consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Miss M's complaint about MBFS.

MBFS says that it has based its assessment of the return condition of the car on guidelines issued by the British Vehicle Rental and Leasing Association ("BVRLA"). Those guidelines set out what might reasonably be considered to be fair wear and tear on a car, as opposed to damage. It seems to me that it is reasonable that the costs of any damage that needs repairing should be borne by Miss M. The previous final decision that she accepted simply said that MBFS should end her agreement with nothing further to pay. I don't think that can reasonably be interpreted to exclude putting right any damage that she had caused to the car.

I've looked carefully at the evidence collated by MBFS regarding the condition of Miss M's car when it was returned. Aside from reasonable wear and tear, in accordance with the BVRLA guidelines, I think MBFS should expect the car to be returned in the same state as when it was sold. The evidence that MBFS has provided shows a number of areas where that standard hasn't been met and so it is reasonable, with the exception of those items I detail below, for MBFS to charge Miss M for their repair.

But, like our investigator, I think there are some elements of the charges that MBFS has made that are unfair. So, as I will now go on to explain, the charges for the following items should be removed from the invoice that has been submitted to Miss M. MBFS said that the Flasher side repeater on the right-hand side was insecure. But the evidence it presented didn't show any damage to that part of the car. MBFS has accepted that no charge should be made for that problem. I agree that it would be fair and reasonable for that charge to be removed from Miss M's invoice.

Miss M's original complaint, that led to the rejection of the car, related to problems with the wheel bearings and brake pads and discs. I don't think it unlikely that those problems might have caused excessive amounts of wear on the tyres. Despite having only travelled around 3,000 miles since the last time the car had been seen by a Mercedes-Benz garage, the tyre

wear had been relatively large. So on balance I don't think it reasonable to conclude that the reason some of the tyres had insufficient levels of tread was due to normal wear and tear. Instead I think it likely to have been caused by the inherent faults with the car.

But one of the tyres was shown to have a large gouge on it. That is unlikely to have been caused by the problems with the car. And there was also damage to three of the alloy wheels. Again that damage is likely to have been caused by Miss M's use of the car rather than any inherent faults.

So, in terms of the wheels and tyres, I think that MBFS should only reasonably charge Miss M for the replacement of one tyre, rather than all four as was shown on the invoice. But I do think the charges for the damage to the alloy wheels are fair.

Miss M accepted the ombudsman's decision that she could reject the car in March 2023. Her vehicle was collected by MBFS around two months later. So I think she had ample time to complete any repairs that were needed if that was what she wanted to do. I have considered whether Miss M was made sufficiently aware that she would be responsible for any damage when the car was returned. The required standards formed part of her original hire purchase agreement with MBFS. Miss M signed the agreement to say that she had been given a copy of the relevant terms and conditions.

So I am satisfied that Miss M is responsible for paying the end of hire charges that MBFS has invoiced with the exception of those items I have described above, and individually detail below.

Putting things right

MBFS should amend the invoice it issued on 19 July 2023 to remove the following charges;

- Flasher side repeater right hand insecure (£35.00)
- Tyre left hand front 1.5mm (£244.53)
- Tyre right hand front 1mm (£244.53)
- Tyre right hand rear 1.5mm (£244.53)

MBFS should issue an updated invoice to Miss M for payment in line with its stated terms of 30 days from the date of the invoice.

My final decision

My final decision is that I uphold part of Miss M's complaint and direct Mercedes-Benz Financial Services UK Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 17 June 2024.

Paul Reilly
Ombudsman