

The complaint

Mr E has complained to us about Mr E has complained to us about a hire agreement with Mercedes-Benz Financial Services UK Limited trading as Mercedes-Benz Finance (“MBFS”).

What happened

In November 2021 Mr E entered into a hire agreement for a new van. The van was delivered to Mr E on behalf of MBFS by a third-party company. At the time, Mr E noted some areas of damage, so he took photographs and notified the dealership.

At the end of the 12 month term Mr E decided he wanted to return the van. It was collected by another third party company on behalf of MBFS. I’ll call this third-party company “B.”

After the van was collected and a more detailed inspection was carried out, MBFS sent Mr E an invoice. It listed a charge for a missed service, charges for extra days of hire and charges for items of damage. (For clarity’s sake I’ll note here that these items of damage were different from the ones Mr E had seen when the van was delivered.)

Mr E was concerned about the charges and complained to MBFS. It sent Mr E its final response letter on 16 March 2023. In summary, it removed two charges for the following reasons. It said it had realised that the service for which it billed Mr E had in fact become due after the van had been collected. So it cancelled that charge (£46), credited it to his account and apologised for raising it. In addition it decided that charges for extra days of hire should not have been applied so it also cancelled those (£263.24).

In relation to the items of damage, it said that it had looked at his complaint but it maintained that the five items were properly charged. I’ve set them out below:

Nearside fuel flap – dented	£21.62
Nearside rear quarter panel – scratched penetrated through to base metal	£178.60
Nearside front door – previous repair	£178.60
Nearside front wing – previous repair	£178.60
Front bonnet – previous repair	£178.60
Total	£736.02

Mr E remained unhappy so he complained to this Service. Our investigator gave his opinion. He said, in summary, that the areas of damage highlighted by MBFS fell outside of the definition of fair wear and tear. He said he was satisfied that the damage was most likely to have occurred when the van was being hired and used by Mr E, rather than after it had been collected by B.

Mr E disagreed with the investigator, so the complaint was passed to me to decide.

I issued a provisional decision on this complaint on 4 June 2024. In this I said:

I've looked at this complaint on the balance of probabilities – that is, what I consider is most likely to have happened in light of the available evidence. Having done so, I think this complaint should be upheld and I'll explain why.

Mr E complains about a hire agreement. Entering into regulated consumer credit contracts such as this is a regulated activity, so I'm satisfied I can consider Mr E's complaint against MBFS.

First of all, I've considered the terms and conditions of the agreement entered into by MBFS and Mr E. These had a section headed: "Vehicle Return Standards." These stated: "If you fail to take reasonable care of the vehicle and fail to maintain the vehicle in accordance with the manufacturer's guidelines and/or the Vehicle Return Standards, you will have to pay our costs either of repairing and/or refurbishing the vehicle, or the cost of the consequent reduction in the sale value of the vehicle, as compensation"

In considering Mr E's complaint, I've also taken into account the guidance on fair wear and tear for light commercial vehicles from the British Vehicle Rental and Leasing Association ("BVRLA"). I believe MBFS are not members of the BVRLA, but I'm satisfied this is a useful industry standard to assess fair wear and tear.

Paint – poor repair

First of all I've considered the issue of the poorly repaired areas of paint. The BVRLA guidance regarding paintwork states:

"Obvious evidence of poor repair, such as flaking paint, preparation works, paint contamination, rippled finish or poorly matched paint, is not acceptable."

In this case, the poor areas of paint have been identified by MBFS as being on the front bonnet, nearside front door and nearside front wing. Mr E is adamant he didn't have these areas repainted.

In considering these charges, I've carefully considered the inspection evidence that's available, including the kerbside collection video and photographs from the later, more complete inspection. In the video a poor paint finish isn't visible. But when the van was collected the weather was wet so understandably that may have hampered video quality. Moreover even on a dry day I wouldn't necessarily expect a kerbside video to be able to capture details of a poor paint finish very clearly. At collection, lighting can be poor, or vehicles are often parked on driveways, adjacent to buildings or on streets next to other vehicles. This can sometimes limit filming angles. I've borne all of this in mind when evaluating the available information in this complaint.

So next I've looked at the photographs from the later inspection. Having looked at them carefully I've concluded that even those photos don't show rippling or poor paint finish clearly. If anything, the paint finish appears to be quite smooth and regular. I've also noted that unfortunately, in some of the photographs, areas of the van are noticeably wet; for example in the photograph of the rear doors of the van there appear to be many drops of water on the curvature of the doors. This appears to be limited to certain areas of the van, however. But nonetheless it isn't ideal when trying to assess what falls outside the definition of fair wear and tear.

Again, I have considered the BVRLA guidance. For paintwork, it states that evidence of poor repair should be "obvious." And it appears from the photographs – and collection video – that there isn't obvious evidence.

Looking at the entirety of the available information, I'm not satisfied on the balance of probabilities that the evidence of the poor paint finish is clear enough for these items to be said to fall outside the definition of fair wear and tear. Therefore I'm not satisfied they are

chargeable. So in the circumstances I think it would be fair for Mercedes not to charge Mr E for these items of damage and I've set this out below.

Nearside fuel flap (dented) and nearside rear quarter panel (scratched)

Next I've looked at the issues of the dent and the scratch. Mr E has complained that following the initial inspection, which was carried out on collection, weeks were allowed to pass before the van was subject to the later, more detailed inspection.

The relevant areas of the BVRLA guidance are as follows:

"Dents of 15 mm or less in diameter are acceptable provided the base metal or material is not exposed or rusted."

And:

"Scratches and abrasions of 50 mm or less are acceptable provided the base metal or material is not exposed or rusted."

I've carefully looked at the photographs taken at the later inspection. The scratch - located on the nearside rear quarter panel of the van - wasn't longer than 50mm. However it had penetrated through to the base metal. In a photograph it shows up as a distinct dark-coloured mark against the white paint of the van. So it would require a full repaint.

Given the distinct appearance of this scratch, it raises the question why it wasn't identified at the time of the initial collection. As I said above, I've made allowances for the limitations involved in carrying out inspections when vehicles are being collected. However I've also looked carefully at the video of the collection and the person taking the video filmed a good deal of the nearside of the van. I'm satisfied that he or she would have been next to the nearside rear quarter panel for a decent interval of time. Despite this, the dark scratch wasn't noticed. Now, I've also taken into consideration that the scratch wasn't very long. But still, the van is white, meaning that against such a background, scratches stand out. On balance I'm not satisfied that it's more likely than not that Mr E caused this scratch and it was present at the time the van was collected.

In relation to the dent on the fuel flap, Mr E told us that he didn't think the vehicle had a fuel flap, as it was an electric van. However I have seen photos online that show a flap on these electric vans. And in the initial video taken on collection, at 0:56 to 0:57 a flap is visible; it sits just behind and flush with the passenger door. If Mr E is saying that the flap wouldn't have been used for liquid "fuel" in the traditional sense, because the van was electric, I take his point. But terminology aside, it appears from the video that the flap is visible on the van. So I'm not persuaded on the basis of the information available, that there was no flap. Next, looking at the photograph of the dent, distortion is clearly shown in the reflection of a zebra board held up against the van. Because of the width of the distortion I'm satisfied that the dent was larger than 15 mm, which would place it outside the definition of fair wear and tear in the BVRLA guidelines.

Mr E has been adamant that he didn't cause the dent and MBFS have said it is satisfied he did. I've considered that it's arguable that as well as the scratch, the dent was not picked up at the initial collection either. However I've also weighed that the dent is less noticeable than the scratch, so at the initial collection it's arguable it would have been easier to overlook. Nevertheless given the positions of Mr E and MBFS, I have to be satisfied that the dent was most likely caused by Mr E. I've borne in mind the weeks that passed between collection and the later inspection. I've also borne in mind that in relation to the scratch I've reached the conclusion above on the balance of probabilities, that it's not most likely that it was already present when the van was collected. Taking into account both the dent and scratch are on the same side of the van this makes me think it's more likely than not that both the dent and the scratch happened at a later stage. So overall, on the basis of the information currently

available I'm not persuaded that it's most likely Mr E was responsible for causing the dent. Looking at everything in the round I don't think it's fair or reasonable for MBFS to bill Mr E for these items, and I've set this out below.

My provisional decision

I intend to uphold this complaint and to direct that Mercedes-Benz Financial Services UK Limited cancel Mr E's bill. I don't believe that Mercedes-Benz Financial Services UK Limited has added adverse information to Mr E's credit file in relation to the outstanding charges to date – but I intend to direct that if it has done it should remove these.

Finally I asked the parties for their comments in response to this provisional decision. MBFS told us it accepted the decision. Mr E replied and said he agreed with the decision. Subsequently Mr E emailed us and complained that as a result of MBFS's actions he had been extremely stressed, and he felt like he had been accused of theft. He said he asked MBFS directly for compensation. Their response was they were unable to offer anything and if he wasn't happy with that he should raise it with us.

So I've considered the likelihood that MBFS caused Mr E distress and inconvenience. I can see that after their inspections MBFS thought that it was Mr E who had damaged the van. So I can understand why MBFS billed Mr E. And several aspects of the information in this complaint were finely balanced. I've also weighed that MBFS has realised its errors, and it accepted the provisional decision. I've also borne in mind that some aspects of the photographs were only visible on very close inspection. Although Mr E feels as if accusations were made against him, based on all the available information, I don't think that MBFS implied this.

But against all this I've considered also that there was a long time between the collection and the later inspection, and I think MBFS hadn't fully contemplated the uncertainty involved in this. Moreover I've read Mr E's emails and he's clearly distressed. In some emails it seems he wasn't able to get responses from MBFS to his queries which I think added to the sense of distress.

I wrote to both parties in the above terms concerning the issue of distress and inconvenience, and told them I was minded to award £150. Both parties replied. Mr E told us he didn't think the amount was high enough and it wouldn't act as a deterrent. MBFS replied and told us it agreed to pay £150 as compensation.

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.

As MBFS accepted the provisional findings, and Mr E agreed with them I still consider the outcome I explained in the provisional decision to be fair and reasonable for the reasons stated.

In relation to the distress and inconvenience, and the appropriate amount needed, Mr E has told us that he believes that the award of compensation should be greater, in order to act as a deterrent to MBFS in future. This service is not the industry regulator and so our role is not to punish businesses and any awards we make cannot be punitive. Moreover our role is not to impose awards that deter businesses. Such actions would be for the Financial Conduct Authority to take. We base the award on what we think has been the impact on the complainant. Having considered the available information and what Mr E has told us in this complaint, I still think that £150 is an appropriate amount to reflect what has happened.

Putting things right

Mercedes-Benz Financial Services UK Limited needs to put things right in accordance with my direction below.

My final decision

For the reasons given above, I'm upholding Mr E's complaint. Mercedes-Benz Financial Services UK Limited should cancel Mr E's bill. As far as I am aware Mercedes-Benz Financial Services UK Limited has not added adverse information to Mr E's credit file in relation to the outstanding charges to date, but if it has it should remove these. I direct Mercedes-Benz Financial Services UK Limited to pay Mr E £150 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 6 August 2024.

Katrina Hyde
Ombudsman