

The complaint

Mr S complains about end of agreement charges that he has been asked to pay by Mercedes-Benz Financial Services UK Limited (“MBFS”).

What happened

Mr S has been assisted in making his complaint by a family member. But in this decision, for ease, I will simply refer to all communication as if it has been with, and from, Mr S himself.

I issued a provisional decision on this complaint last month. In that decision I explained why I thought part of the complaint should be upheld and what MBFS needed to do in order to put things right. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

In November 2019, Mr S was supplied with a new car through a hire purchase agreement with MBFS. The agreement was for £22,054.09 over 48 months, with monthly repayments of £318.67 and an optional final repayment of £10,800. The agreement also showed a deposit of £1,000 had been paid. Under the agreement Mr S was allowed to add 8,000 miles per annum to the car.

In 2023, as the agreement was nearing its end, Mr S asked MBFS if he could extend it for a period of three months. Mr S says he returned his acceptance of the extension, but MBFS says it was not received. Mr S’ car was returned to MBFS in February 2024 and the collection paperwork showed a mileage of 61,431.

When Mr S’ car was returned to the auction site appointed by MBFS it was inspected for damage. MBFS sent Mr S details of the damage it had noted and its costs for repair. It also told Mr S that he would need to pay some additional charges for the additional time he had use of the car following the end of the original agreement. And it explained that Mr S had exceeded the permitted mileage so he would be charged for that excess mileage in accordance with the terms of his agreement.

Mr S complained to MBFS about the charges. MBFS noted that different mileages had been reported at collection, and inspection. So it reduced the mileage charge to reflect the lower of those figures. MBFS also removed charges for the vehicle documentation that was recorded as being present when the car was collected. It reduced a charge it was making for damage to one of the wheels. MBFS reduced the charge for the additional time Mr S had the car, to reflect the lower monthly repayment he had been quoted when he asked to extend his agreement. And, as a gesture of goodwill, MBFS deducted £50 from the outstanding balance to reflect some poor service Mr S had received, leaving a total balance outstanding of £5,030.90. Unhappy with that response Mr S brought his complaint to us.

Mr S was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it.

I will first deal with Mr S' request to extend his agreement by three months that he made in October 2023. I can see that MBFS did make an offer for the agreement to be extended and provided the terms that were available to Mr S. In brief those would have required Mr S to make a reduced monthly repayment of £244.14. And MBFS has confirmed that an extension of that nature would also have provided a proportionate increase in the mileage that Mr S was allowed to travel under the agreement.

It isn't possible for me to reasonably conclude why that extension was not put in place. Mr S says that he electronically signed the agreement and returned it to MBFS. MBFS says it wasn't received. But MBFS hasn't imposed any penalties on Mr S for his use of the car after the expiry of the original agreement – it has simply asked him to pay the monthly rental that he says he agreed to pay. I think the monthly rental payments that MBFS has asked Mr S to pay are fair, and in line with the extension agreement that he says he signed and returned.

But I'm not persuaded that MBFS treated Mr S fairly in relation to the extension. MBFS made no contact with Mr S when it didn't receive the signed extension documentation and instead simply allowed him to continue using the car. I think, at the natural end of the agreement, MBFS should have made contact with Mr S. And doing so would have highlighted to Mr S that the documentation he says he sent hadn't been received. So, in line with how MBFS has dealt with the monthly repayments – reducing them to reflect the lower amount it had agreed as part of the extension – I think it appropriate that I also take account of the additional mileage allowance Mr S would have been given, as I go on to consider the excess mileage charge MBFS is imposing.

When Mr S first entered into the hire purchase agreement in 2019, it set out some terms that are applicable to the matters forming his complaint. It told Mr S that after the four years of the agreement had passed he could either make a final repayment of £10,800 or he could return the car. But if he chose to return the car Mr S agreed to some terms about its condition. Mr S agreed that the car's mileage wouldn't exceed 32,000 miles – or if it did that he would need to pay the excess mileage charge of 8p + VAT per mile. And the agreement set out what damage would and wouldn't be acceptable when the car was returned.

When Mr S' car was collected from him its mileage was recorded as 61,431. That is significantly in excess of the mileage that was set out as part of the hire purchase agreement that Mr S signed. So I think it is fair that MBFS should ask Mr S to pay the relevant excess mileage charge. MBFS says the excess mileage was 29,431 but as I have said above I think that should be reduced to reflect the additional three months that Mr S was allowed to keep the car. That would equate to a reduction of 2,000 miles under the same terms as the original agreement meaning that I think the excess mileage charge for Mr S to pay should be revised to £2,633.37.

When Mr S' car was collected from him he was given a receipt. That showed one item of damage – a scratch on the left-hand rear of the car. But, importantly, the receipt clearly stated that it did not constitute a "full wear and tear assessment – general indication of condition only". And I have noted that when the collection took place the weather was raining, and the car was dirty. MBFS says the collection agent isn't trained to complete a full condition assessment, and that was performed when the car reached its appointed auction preparation site.

MBFS has provided the evidence that was collected of the damage to Mr S' car. I have carefully reviewed that evidence against the damage MBFS says was present. That damage has been clearly set out, together with the associated repair costs, in the final response letter that was sent to Mr S. I am satisfied that the damage MBFS says is chargeable is shown on the inspection report dated 14 February.

And I have considered the photographs that Mr S has supplied that were taken as the car was being loaded onto the transporter at his house. Those photographs are from a reasonable distance away. And given the dirty state of the car they do not allow me to determine whether or not any damage was present. But, and most importantly here, they don't contradict the evidence that MBFS provided from its own inspection – the damage that shows doesn't appear to be missing on the photographs provided by Mr S.

As I said earlier, the inspection report does seem to indicate a much higher mileage than when the car was collected from Mr S. But MBFS has also given us a copy of a later report from the auction site it used to sell the car that shows a mileage in line with that when it was collected from Mr S. So I am satisfied there was no excessive driving of the car during the inspection process that might have caused any of the damage – the mileage recorded during the first inspection appears to be a clerical error.

I have listened to a telephone call that Mr S had with MBFS about some of the excess charges. I am sorry to tell Mr S that the recording doesn't support his recollection of what was discussed. He was told about the additional charges for the extended rental period, but wasn't given any assurances that other charges wouldn't also be payable. He was specifically told he would also need to pay for any excess mileage and any damage to the car.

I appreciate that this decision will be disappointing for Mr S. I do think MBFS should have done more when Mr S exceeded the agreed rental period, so I think a reduction in the excess mileage charge is reasonable. But I think the other charges, for the extended hire period and the damage to the car are fair.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. MBFS hasn't provided us with anything further. Mr S has provided some additional comments. Although I am only summarising here what Mr S has said I want to reassure him that I have read, and carefully considered, his entire response.

Mr S says that he was given no indication by MBFS that his agreement hadn't been successfully extended before he travelled abroad for three months. He expected to be able to return the car when he returned to the UK. But he says he needed to arrange for a family member to take photographs of the car before it was returned. He says there was only one small dint on the car before he started his trip, so he doesn't think he is responsible for the damage MBFS is claiming for. Mr S says he has not made any mistakes over the contract terms so expects the additional charges to be waived off.

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 I set out in my provisional decision, 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 Mr S 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.

And I repeat my reflections 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.

I've thought carefully about the additional information that Mr S has provided. But I am sorry to tell him that it doesn't change my decision on his complaint. I would however like to make some further comments on the matters he has raised.

As I explained in my provisional decision I agree with Mr S that MBFS should have done more to make him aware that it hadn't extended his agreement when it reached the end of its term. And so the recommendations I have made, in terms of the additional rental payments and an increase in his mileage allowance, effectively place him into the position he would have been had the agreement been extended for three months as he'd asked.

But I don't think any failings over the extension of the agreement have much bearing on the additional charges MBFS is asking Mr S to pay. I accept that he wasn't able to be present when his car was collected at the end of the agreement. But the collection actually took place when it would have done had the three-month extension been in place. And as I explained in my provisional decision I am satisfied that the damage MBFS is charging for on its invoice is clearly shown in the evidential photographs it has provided. I have seen nothing to make me think all those pieces of damage occurred after the car had been collected from Mr S.

So my overall conclusions remain unchanged. I do think MBFS should have done more when Mr S exceeded the agreed rental period, so I think a reduction in the excess mileage charge is reasonable. But I think the other charges, for the extended hire period and the damage to the car are fair.

Putting things right

MBFS should issue a new invoice to Mr S with its amount reduced by £192 (2,000 miles) to reflect the additional mileage allowance he would have received had the agreement been formally extended.

My final decision

My final decision is that I uphold a part of Mr S'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 Mr S to accept or reject my decision before 10 January 2025.

Paul Reilly
Ombudsman

