DRN-4495942

The complaint

Mr M is unhappy with the charges Mercedes-Benz Financial Services UK Limited ("MBFS") applied, when he handed back a car he acquired under a hire purchase agreement.

What happened

In September 2016, Mr M entered into a four-year hire purchase agreement to acquire a brand new car. The agreement reached maturity in September 2020 and the car was collected in February 2021 by MBFS' recovery agents– who I'll refer to as B.

An inspection was carried out at a compound in February 2021 when Mr M wasn't present. B said the following damage, estimated at £1,270.84, was outside of fair wear and tear:

1. Screen front – chipped - £32
2. Left hand front wheel – spoke damaged - £110
3. Left hand rear wheel – spoke damaged - £110
4. Right hand front wheel – spoke damaged - £110
5. Right hand rear wheel – spoke damaged - £110
6. Compressor – missing - £140.50
7. Right hand front tyre – incorrect speed rating - £149.22
8. Left hand front tyre – incorrect speed rating - £149.22
9. Left hand rear quarter panel – dented - £260
10. Tailgate - dented - £35
11. Load area carpet handle – broken - £29.90
12. Right hand rear quarter panel – dented - £35

MBFS said that because Mr M had returned the car with 5,566 more miles than his contract allowed, he would need to pay an excess mileage charge in addition to the damage charges. The excess mileage charged totalled £400.75. This means that overall, Mr M was required to pay £1,671.59.

Mr M complained to MBFS as he was unhappy with the charges. He said he didn't cause any damage that exceeded fair wear and tear. Mr M said the damage charges were unjustly applied and requested that MBFS remove the damage charges. Mr M said the excess mileage charges were unclear and the agreement didn't provide clear, fair and non-misleading information. He requested MBFS refund the excess mileage charge. Mr M also said MBFS should remove any adverse information from his credit file and also compensate him for the trouble and upset caused.

MBFS issued its response to Mr M's complaint in October 2023. It said Mr M had agreed to the charges for the two tyres with incorrect speed ratings, the missing compressor and the load area carpet handle. MBFS said upon review, it removed the charges for the right hand rear quarter panel and the chipped front screen. These charges totalled £67. It said the remaining damage charges were outside of its Vehicle Return Standards ("VRS") and the

excess mileage charge should have been calculated at £400.82 but it would only expect Mr M to pay it £400.75.

MBFS also said Mr M agreed to enter into a payment plan to pay £1,636.59 at £50 per month in June 2021. It said Mr M did this until 21 March 2023, but then didn't make any payments until May 2023 when a new plan was set up. It said Mr M's last payment under the plan was due in February 2023.

Unhappy with this, Mr M referred his complaint to this service. He reiterated his complaint and said MBFS had treated him unfairly by enforcing the debt upon him.

Our investigator looked into the complaint and said he thought MBFS should remove the charge for the dent to the tailgate of the car. He said the remaining charges were applied fairly in line with VRS and the industry standard - The British Vehicle Rental & Leasing Association's ("BVRLA") fair wear and tear guidelines. He also said the excess mileage charges were applied in line with the terms and conditions of the agreement.

MBFS agreed. Mr M disagreed and asked an ombudsman to review his complaint.

As Mr M remains unhappy, the complaint has been passed to me to decide.

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've read and considered the whole file and acknowledge that Mr M has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome. The rules of this service allow me to do this.

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

When reaching my decision, I'm required to consider relevant industry guidance. Here, relevant guidance includes the guidelines on fair wear and tear published by the trade body, the BVRLA. This guidance is generally intended for the return of new cars at the end of the first leasing cycle. MBFS isn't a member of the BVRLA, but I've considered the BVRLA guidelines alongside MBFS' VRS.

The VRS are set out in Mr M's hire purchase agreement and these explain the standards that MBFS expected this car to meet on return. When Mr M acquired his car under the hire purchase agreement, he agreed to return the car in line with the standards set out in the VRS. And he agreed that MBFS would be entitled to charge him for costs of repairs and/or refurbishing the vehicle, or the cost of the consequent reduction in the sale value, as compensation.

In this case, MBFS has already removed the charges for the screen and the right hand rear quarter panel. I haven't reviewed whether these charges need to be removed, as both parties are in agreement they should be removed and MBFS has already removed the charges. So, this decision will only focus on the remaining outstanding charges.

MBFS say Mr M doesn't appear to dispute that some of damage was present when the car was inspected by B. However for completeness, I've reviewed whether I think the damage charges have been fairly applied.

Alloy damage

In relation to alloys, the VRS say the following damage is acceptable:

"Minor scuffing or damage under 25mm to the vehicle alloy or steel rim edge or wheel face".

And the following is not acceptable:

"Scuff chips and scratches exceeding 25mm".

BVRLA guidance says:

"Dents on wheel rims and wheel trims are not acceptable.

Scuffs up to 50mm on the total circumference of the wheel rim and on alloy wheels are acceptable.

Any damage to the wheel spokes, wheel fascia, or hub of the alloy wheel is not acceptable. There should be no rust or corrosion on the alloy wheels."

I've looked at the photographs provided for all four of the alloys where damage was identified by B. The photographs provided show a ruler measuring damage and scuffing in excess of 50mm. In light of this, I'm satisfied MBFS is entitled to charge Mr M for the damage to all four alloys as it falls outside of fair wear and tear.

Missing compressor

The VRS state that the car must be returned with *"everything originally supplied with the vehicle".*

B has noted on the inspection report that the compressor was missing in the car at the time the car was inspected. B provided photographs showing the casing for the compressor in the car, without the compressor present. As a result of this, I'm satisfied that the compressor wasn't returned with the car and so, MBFS is entitled to charge Mr M for this.

Tyres

In relation to tyres, the VRS say *"Your vehicle must conform to the original specification of the vehicle. It must have matching tyres (of a size and premium brand, approved by the manufacturer) on each axle…"*.

BVRLA guidance says:

"All tyres, including any spare, must meet minimum UK legal requirements and comply with the vehicle manufacturer's recommendations of tyre type, class, size and speed rating for the vehicle".*

The photographs provided by B show both tyres with a speed rating of 225. The handbook recommends tyres with a speed rating between 195 and 205. However the two tyres on the car Mr M returned to MBFS had a rating of 225. So, the tyres had an incorrect speed rating and so, they didn't comply with the manufacturer's recommendations. This means MBFS is entitled to charge Mr M for returning the car with two incorrect tyres.

Left hand rear quarter panel and tailgate

In relation to the body and paint of the car, the VRS say the following is acceptable:

"Minor body dents, typically those caused by door to door contact, provided that:

a) *They are less than 13mm (1/2") in diameter – maximum 1 dent per panel to maximum 2 dents per vehicle for vehicles up to 2 years old and 4 dents for vehicles over 2 years*

BVRLA guidance says:

"Dents of 15mm or less in diameter are acceptable provided there are no more than two per panel and the paint surface is not broken… Dents on the roof or swage line of any panel are not acceptable".

B's inspection report shows a ruler and a zebra board next to the dents that were identified on the left hand rear quarter panel. There are two dents in the picture and both these dents are in excess of 15mm. As a result of this, I'm satisfied that MBFS are entitled to charge Mr M for this damage as it falls outside fair wear and tear.

However, having reviewed the picture that has been provided for the damage to the tailgate, although there is a reflection of a zebra board on the body of the car, there is no apparent distortion of the lines, apart from what appears to be the swage line in the body of the car. I can't see any supporting information to show there is a dent on the tailgate. And so, I don't think MBFS is entitled to charge for the damage B identified to the tailgate and I'm not satisfied it falls outside of fair wear and tear.

Load area carpet handle

In relation to the interior, the VRS say, *"Broken or damaged interior mouldings, trim pads, instrument panel, sun visor or headlining, etc."* is unacceptable.

BVRLA guidance says, *"Accessories such as parcel shelves, load covers, boot liners, restraining straps and nets must be returned with the vehicle".*

In this case, B's report and photographs show that the load carpet handle isn't present and so it is broken. The photograph clearly shows the handle has become detached and so, I think MBFS are entitled to charge Mr M to repair the handle, as this damage falls outside fair wear and tear.

Excess mileage charges

Mr M says the excess mileages charges were unclear and the agreement didn't provide clear, fair and non-misleading information. However, having reviewed Mr M's agreement, I'm satisfied that the agreement is clear, fair and non-misleading in relation to the excess mileage charges. I'll explain why.

Mr M's finance agreement states his annual permitted mileage is 8,000 miles per annum. This is stated on the first page of his agreement. Given Mr M had a four-year agreement, this would mean he had a mileage entitlement of 32,000 whilst he had the agreement.

The agreement states:

"If you return the vehicle to us and you have exceeded the total permitted mileage, which is based on an annual permitted mileage of 8,000 miles, an excess mileage charge of 6.00p excluding VAT for each mile will be payable by you for each additional mile exceeding the total permitted mileage. Please refer to the "Excess Mileage" clause in your terms and conditions for more information.

The terms and conditions say:

"You will pay us a charge at the rate stated in this agreement, if and to the extent that the Total Mileage exceeds the total permitted mileage for the vehicle (calculated using the annual permitted mileage stated in this agreement for each year or part of the year between the start date and date of return."

The agreement is clear in stating that Mr M has an annual agreed mileage limit and that he would need to pay a charge for each additional mile over 32,000 miles.

At the point Mr M returned the car in February 2021, it had travelled 37,567 miles. This is 5,567 miles more than was allowed under the terms of Mr M's contract. It's unclear whether this mileage was accrued before or after September 2020. MBFS made an error and calculated the mileage as 37,566 when it was returned. And so, it calculated the excess mileage charge based on the excess mileage being 5,566. As a result of this, MBFS charged Mr M 6p excluding VAT per each mile. This totals £400.75.

Mr M's agreement appears to have been extended until February 2021, due to some confusion around a payment holiday and negotiations about a contract extension. However,

MBFS waived the additional days hire costs between September 2020 and February 2021. In light of this, given Mr M didn't pay for the use of the car for around five months, I'm satisfied that MBFS can charge Mr M for the excess mileage he accrued up until the point he returned the car.

I say this because if MBFS hadn't waived the fees for the use of the car for around five months, Mr M would have been expected to pay for the use of the car at an additional rate for each day. However, Mr M wasn't required to do this. So I think MBFS has acted with forbearance and due consideration, by only requiring Mr M to pay for the excess mileage instead.

My final decision

Mercedes-Benz Financial Services UK Limited has already made an offer to reduce Mr M's outstanding balance owed for the damage charges by £102 to settle the complaint. I think this offer is fair in all the circumstances.

So my decision is that Mercedes-Benz Financial Services UK Limited should reduce Mr M's outstanding balance for the damage charges by £102, if it hasn't already done so.

I'll also take this opportunity to remind Mercedes-Benz Financial Services UK Limited of its obligations to treat Mr M with forbearance and due consideration, if he is currently in financial difficulty.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 January 2024.

Sonia Ahmed
Ombudsman