Notice of Undertaking

Mercedes-Benz Financial Services (UK) Limited

Summary

Mercedes-Benz Financial Services (UK) Limited (referred to as "MBFS" or "the firm") has committed to making changes to its consumer vehicle 'Hire Purchase Agreements' that contain an excess mileage charge (referred to as the "contract" or the "contracts") and has given the Financial Conduct Authority (the FCA) an undertaking under the Consumer Rights Act 2015.

The firm has also voluntarily agreed to provide redress to affected consumers who entered into contracts since 1 January 2014.

We summarise our concerns and the voluntary action the firm has taken below.

Why did we have concerns?

We were concerned that the excess mileage term was unclear how the consumer's permitted mileage would be calculated in the event that the contract was terminated part of the way through a 12-month period, for example in the event of a voluntary termination by the consumer. This meant that consumers may not have understood what their permitted mileage was and the amount of any excess mileage charges that would therefore be applied. In addition, we were concerned that in practice MBFS had not interpreted the terms in the way most favourable to consumers.

What has the firm done?

MBFS has:

- agreed new contracts entered into from 31 December 2024 will contain an excess mileage term which will more clearly explain how the excess mileage charge will be calculated;
- agreed not to rely on the term in any of its existing contracts with consumers and has assured us that where the contract has been voluntarily terminated early it has not relied on the term since January 2022; and
- voluntarily agreed to carry out a redress exercise to identify consumers who have been affected by the unclear term in contracts entered into since 1 January 2014 and to provide redress where it is appropriate to do so. To date this exercise has led the firm to estimate that redress will be paid to approximately 4,700 consumers.

The firm has fully co-operated with us in resolving our concerns.

What does this mean for consumers?

The new term will clearly explain:

- what the permitted mileage is so a consumer can work out if excess mileage charges apply and the amount of those charges, in the event of the contract ending early for any reason; and

- that the total permitted mileage will be calculated on a pro-rata basis, including the method for the pro-rata calculation (for example on a daily, weekly, monthly or other basis).

MBFS has voluntarily agreed to refund consumers affected by the unclear term since 1 January 2014. The firm will begin contacting consumers in mid 2024, and expects to contact affected consumers by the end of December 2024. Consumers who think that they may have been affected and have not been contacted by MBFS by the end of December 2024 should contact MBFS.

Undertaking from Mercedes-Benz Financial Services (UK) Limited to the Financial Conduct Authority

Mercedes-Benz Financial Services (UK) Limited (referred to throughout as "MBFS" or "the firm") undertakes under the Consumer Rights Act 2015 (the CRA) in relation to its consumer vehicle 'Hire Purchase Agreement' contracts which contain a contractual right to charge excess mileage in the event of early termination (referred to as the "contract" or "contracts") to:

1. ensure that the contracts, entered into from 31 December 2024, contain an excess mileage term that shall be drafted in a transparent manner by stating the method for the calculation of the excess mileage charges and in particular stating whether the pro rata calculation performed on the basis of permitted mileage is adjusted on a daily, weekly, monthly or other basis.

   and

2. not charge an excess mileage charge in respect of any relevant contract that is terminated early (including those entered into prior to this undertaking) if the excess mileage charge term does not comply with the transparency criteria set out in paragraph 1 above.

Applying the CRA

Section 68(1) of the CRA states that firms are required to "ensure that a written term of a consumer contract… is transparent." Under section 64(3) of the CRA, a term is transparent if "… it is expressed in plain and intelligible language and it is legible."

MBFS Hire Purchase Agreement

MBFS has committed to making changes in respect of the excess mileage term. The term in contracts in use from 2020 onwards stated:

> *"…If the vehicle is returned to us, we will calculate the total mileage (the 'Total Mileage') travelled by the vehicle whilst in your possession (including the distance to the nominated defleet centre)."*
>
> *"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 year between the start date and the date of return)."*

We considered the transparency of the term in light of the CRA and relevant case law. We were concerned that this term was likely to be considered as lacking sufficient transparency under the CRA.

In our view, it was unclear from the term what the permitted mileage was if the consumer returned their vehicle part of the way through a 12-month period, for example in the event of a voluntary termination. In our view, the average consumer could understand the wording "…calculated using the annual permitted mileage stated in this agreement for each year or part of year between the start date and the date of return" as meaning that the entire annual

permitted mileage allowance could apply for part of that year. As a result, we were concerned that the average consumer was unable to evaluate the economic consequences deriving from the term, since it was unclear what the permitted mileage would be and whether they would be charged any excess mileage charges.

We were also concerned with the wording of the excess mileage term used in previous versions of the consumer vehicle contract. Whilst these versions of the term provided additional context stating that the calculation was "pro-rated for part years", we remained concerned that it was unclear whether the permitted mileage would be pro-rated on a daily, weekly or monthly basis.

Under Section 69 of the CRA, where a contract term in a consumer contract could have different meanings then it must be applied in the way that is most favourable to the consumer. We were concerned that MBFS had not done this.

The firm has agreed to amend the term to make it clear that the permitted mileage will be calculated and adjusted on a pro-rata basis, setting out the method for the pro-rata calculation and in particular whether it is adjusted on a daily, weekly, monthly or other basis.

Other information

The firm has been fully cooperative in providing this undertaking.

Undertaking agreed on 25 April 2024 and published on 9 May 2024.

Legal information

As a regulator, we, the Financial Conduct Authority (FCA), can challenge firms using terms that we view as not being fair or transparent under Part 2 of the Consumer Rights Act 2015 (the CRA). We review contract terms that we come across in our supervision of firms and those referred to us by consumers, enforcement bodies and consumer organisations. This has led to MBFS's undertaking to replace the term that we consider is likely to lack sufficient transparency.

The FCA has a duty under Schedule 3 of the CRA to notify the Competition and Markets Authority (the CMA) of the undertakings we receive. We publish the undertakings on our website, naming the firm, specifying the term(s) identified, and referring to the part of the CRA that relates to the fairness and transparency of the term(s).

Even if firms have not given an undertaking or been subject to a court decision, they should remain alert to undertakings or court decisions concerning other firms as part of their risk management. These will be of potential value in showing the likely attitude of the courts, the FCA, the CMA or other regulators to similar terms or terms with a similar effect.

Ultimately only a court can determine the fairness or transparency of a term. As such, we cannot approve terms as being definitively fair and transparent for the purposes of the CRA; it is for firms to assess the fairness and transparency of their terms and conditions under the CRA and in the context of the product or service in question.

It is important to bear in mind that wording that is fair or transparent in one agreement is not necessarily fair or transparent in another. Where we accept an undertaking given to us by a firm to revise a term, this means that, on the evidence available at that time, we consider the term to be improved enough that further regulatory action is not required.