

## **The complaint**

Mr G is unhappy that a car supplied to him under a hire purchase agreement with Mercedes-Benz Financial Services UK Limited ('MBFS') was misrepresented to him.

## **What happened**

In September 2023, Mr G was supplied with a new car through a hire purchase agreement with MBFS. He paid a £21,057.07 deposit and the agreement was for £44,506.93 over 36 months; with monthly payments of £468.64 and a final optional payment of £34,525.

When Mr G ordered the car, he test drove a demonstration model that had interior ambient lighting. Given the similarities between the car Mr G was part-exchanging as part of the deal and the car he was looking to acquire, Mr G has said that the presence of this ambient lighting was a key factor in his decision to choose a particular model. However, when the car was supplied to Mr G, it didn't have the ambient lighting.

Mr G complained to MBFS about the lack of ambient lighting on the day the car was supplied to him. In their response, MBFS said that the ambient lighting package Mr G wanted had not been available in new cars since 2021/2022, and the demonstration model he test drove must've been manufactured before this date. They provided Mr G with an up to date copy of the brochure for the car he was supplied with and offered him £200 as a gesture of goodwill for any confusion that had been caused. Mr G was unhappy with this response, and he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator thought the car had been misrepresented to Mr G at the point of sale, and that MBFS should do something about this. As the ambient lighting couldn't be retrospectively fitted, the investigator said that MBFS should allow Mr G to reject the car, refund his deposit, and pay him a total of £250 compensation for the distress and inconvenience he'd been caused.

Mr G didn't agree with the investigator's opinion. He said that he was paying around £200 a month more for this car than he had been for the car he part-exchanged, so he thought this should be taken into consideration. He also said that he'd been having problems with the car that had been supplied to him, and it had broken down on more than one occasion. Finally, Mr G said that the supplying dealership had advised him that the ambient lighting was only unavailable in a few cars, and he provided evidence of post-2021 cars currently for sale that had the ambient lighting feature.

Because Mr G didn't agree, this matter 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't

believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr G was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

This is a case about misrepresentation. When considering this I need to consider if there has been any false statement of fact and, if there was, if that false statement of fact induced (in this instance) Mr G to choose that particular car.

The facts of this case aren't disputed – Mr G was led to believe that the car he had ordered would be provided with ambient lighting, and this wasn't the case. I'm therefore satisfied there was a false statement of fact. While I've noted Mr G's evidence that cars manufactured after 2021 have this feature, which MBFS have said they didn't, I don't think this has any bearing on the matter. I say this because the issue at hand is whether the car supplied to Mr G had the ambient lighting feature – which it didn't – not whether other cars of a similar age, make, and model were manufactured with this feature.

I'm also satisfied that the ambient lighting feature was very important to Mr G. Not only does he say that this was one of the few differences between the car he was part-exchanging and the car he ordered; but by complaining about the lack of this feature on the day the car was supplied to him this shows this importance. I'm therefore also satisfied that, on the balance of probabilities, the false statement of fact induced Mr G to choose this particular car.

As such, I'm satisfied that the car was misrepresented to Mr G, and MBFS need to do something to put things right.

### **Putting things right**

As the car was misrepresented to Mr G, and because the ambient lighting feature he wanted cannot be retro-fitted to the car, Mr G should be allowed to reject the car and receive a refund of the deposit he paid. With regards to the payments he made while the car was in his possession, Mr G was still able to use the car. Whilst it is not part of this complaint, Mr G has provided evidence of the issues he's had with the car, and the work that was carried out. However, I've seen nothing to show me that Mr G wasn't provided with a courtesy car while this work was being done, so therefore wasn't kept mobile. As such, I think it's only fair that Mr G pays for this usage and I won't be asking MBFS to refund any of the payments he's made.

I appreciate that Mr G was paying more for this car than the car he part-exchanged, but he was also benefitting from a brand-new car, rather than an older car. As such, I also don't think MBFS need to compensate Mr G for the difference in the payments for these two cars.

Finally, I think Mr G should be compensated for the distress and inconvenience he was caused by being provided with a car that lacked the ambient lighting feature he wanted, and believed he was getting. But crucially, this compensation must be fair and reasonable to both parties, falling in line with our service's approach to awards of this nature, which is set out clearly on our website and so, is publicly available.

I note our investigator also recommended MBFS pay Mr G a total of £250, to recognise the distress and inconvenience he'd been caused. And having considered this recommendation,

I think it's a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think this is significant enough to recognise the upset Mr G would've felt by not having the ambient lighting feature, but also recognises this didn't affect any other aspect of the car – the lack of this feature didn't make the car in anyway unsafe or undrivable. So, this is a payment I'm directing MBFS to make

Therefore, if they haven't already, MBFS should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr G (Mr G would still be liable for any damage to the car that falls outside of normal wear and tear guidelines);
- remove any adverse entries relating to this agreement from Mr G's credit file;
- refund the deposit Mr G paid (if any part of this deposit is made up of funds paid through a dealer contribution, MBFS is entitled to retain that proportion of the deposit);
- apply 8% simple yearly interest on the refunds, calculated from the date Mr G made the payment to the date of the refund<sup>†</sup>; and
- pay Mr G a total of £250 to compensate him for the trouble and inconvenience caused by being supplied with a car that had been misrepresented to him (if MBFS have already paid Mr G the £200 offered in their complaint response letter, they only need to pay the remaining £50).

<sup>†</sup>If HM Revenue & Customs requires MBFS to take off tax from this interest, MBFS must give Mr G a certificate showing how much tax they've taken off if he asks for one.

### **My final decision**

For the reasons explained, I uphold Mr G's complaint about Mercedes-Benz Financial Services UK Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 24 December 2024.

Andrew Burford  
**Ombudsman**