

## **The complaint**

Mr C and Miss C complain that they were misled into taking out an agreement with Mercedes-Benz Financial Services UK Limited ("MBFS") to acquire a new car.

## **What happened**

Mr C and Miss C acquired a new car using a finance agreement with MBFS. Mr C and Miss C had issues with it and it was agreed, among other things, for the car to be rejected under the Consumer Rights Act 2015 ("CRA"). Mr C and Miss C also said that it was agreed the exact same car would be sourced to replace the one which had been rejected.

In April 2021, Mr C and Miss C acquired a new car using a hire purchase agreement with MBFS. They believed it to be the same as the one they previously acquired and later rejected.

Shortly after acquiring the car, Mr C and Miss C said they noticed the ambient lighting in the headrests were not working and the ambient lighting on the dashboard intermittently stopped working.

Mr C and Miss C said they contacted the supplying dealership about both issues. They said they were told a soon to be released part would resolve the issue with the lighting in general and also fix the ambient lighting in the headrest. Many months passed and in July 2022, the part was repaired. Unfortunately, the relevant part repaired didn't resolve the ambient lighting issue in the headrests.

Mr C and Miss C complained to MBFS. They said it later transpired that the car was no longer sold with ambient lighting in the headrest and as such, believed they were mis-sold it. MBFS looked into retrofitting the ambient lighting in to the headrest, but they confirmed this was not possible due to vehicle wiring.

Mr C and Miss C referred their complaint to our service. Mr C and Miss C said they wanted the deposit they paid of £3,000 refunded to be compensated for the lights in the headrests missing. They explained that if they were told the car didn't have ambient lighting in the headrests in April 2021, they would have rejected the car at the time. They said they would have acquired the model lower which was cheaper.

Mr C and Miss C confirmed that they have since settled their agreement with MBFS.

Our investigator issued his opinion where he found MBFS didn't need to take any action. In summary, he said that he hadn't seen anything to suggest Mr C and Miss C had asked MBFS whether the car came with ambient lighting in the headrests. He went on to explain that he has reviewed several marketing brochures and they don't specify that ambient lighting is present in the headrest. So, in terms of specification, he concluded the car was the same as previously supplied to them and didn't think MBFS had made a false statement of fact or the agreement was mis-sold to them on that basis.

Mr C and Miss C disagreed with the investigator's findings and so 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.

Having done so, I'm not upholding this complaint and I'll explain why below.

There are aspects of Mr C and Miss C's complaint I haven't commented on – and that's deliberate. What follows are my comments on what I believe to be the main points to resolve this complaint in a fair way; namely, were Mr C and Miss C misled into taking out the finance agreement with MBFS.

When considering what's fair and reasonable, I take into account relevant law, regulations and guidance. Section 56 of the Consumer Credit Act 1974 explains that, under certain circumstances, finance providers are liable for what they say and for what is said by a credit broker or supplier before the consumer takes out the credit agreement.

It is clear in this case that the loan partly financed the purchase of the car. The company that sold the car was the dealership. I have approached this case on the basis that the loan was set up as a result of pre-existing arrangements between MBFS and the supplying dealership and that section 56 of the Consumer Credit Act therefore applies.

Mr C and Miss C complain they were misled into taking out a finance agreement with MBFS as they were told the car acquired was exactly the same as one they previously returned. So I've considered if a misrepresentation occurred here.

I would consider a misrepresentation to have taken place if Mr C and Miss C were told a 'false statement of fact' that induced them into entering into the agreement they otherwise would not have. So ultimately, what I need to firstly consider is whether Mr C and Miss C were told that the car would have ambient lighting in its headrest.

Mr C and Miss C believes the car they were supplied should have come with ambient lighting in the headrests due to her previous car having it. But what I need to consider is whether they were told this specific car they acquired would have ambient lighting in the headrests.

From evidence provided, I can't see that MBFS told Mr C and Miss C that there would be ambient lighting in the headrest, nor is there any suggestion Mr C and Miss C specifically asked MBFS whether it would be present. I also don't think MBFS were aware how important ambient lighting in the headrests were to Mr C and Miss C before they acquired the car.

I have also reviewed sales brochures that would have been available to Mr C and Miss C when they acquired their car. While they do describe the car having ambient lighting – which isn't in doubt the car had – it doesn't specifically say ambient lighting is present in the headrests. The images within the brochure also don't show ambient lighting present in the headrests, but only in areas along the dashboard, for example.

So, I don't think a false of statement was made to Mr C and Miss C and it follows I don't think the agreement they took out with MBFS was misrepresented.

I've also considered whether the CRA is relevant to this complaint. The CRA explains under a contract to supply goods, the supplier – MBFS here, has a responsibility to make sure

goods match a description. But as I've already said, the goods supplied match the description provided in its sales brochures. So, I'm not persuaded the car didn't meet the description given.

### **My final decision**

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Miss C to accept or reject my decision before 13 October 2023.

Ronesh Amin  
**Ombudsman**