

The complaint

Mr M has complained about a car he acquired under a hire purchase agreement with BMW Financial Services (GB) Limited (BMWFS).

What happened

Mr M ordered and acquired a new car under a hire purchase agreement with BMWFS in September 2022. The car cost around £65,940. The agreement was for £75,150 with 47 monthly payments of £690 and an optional final repayment of £28,098.

He said that within an hour of collecting the car he noticed that it didn't have Adaptive Cruise Control (ACC). He said he'd made it clear to the supplying dealer that he wanted the new car to have the same specification as his previous car. He said he had always stipulated that adaptive cruise control and memorable seats were the two items he needed in a car. He said that the dealer had told him the only thing missing from the new one car compared to his old car was the heated steering wheel.

He said he wanted to return the car as he felt it had been mis-sold to him. He said the dealer told him to keep the car and they would sort it.

Mr M had discussed several cars with the dealer in the period January 2022 to September 2022. He'd been sent videos and specifications which he'd discussed with the dealer. On 23 August 2022 Mr M messaged the dealer confirming "*It's a yes for the car*". He asked about service, tyres, and wheels. And in a follow up message he specifically asked for the visibility pack, and automatic boot opening.

He told BMWFS he believed the wording for the feature had changed since his previous car, and this meant he was unaware the cruise control feature was different. He told them the specification sheet wasn't given to him or explained to him. He told them he believed the driver assistance package now becoming driver assistance pro had caused the confusion and resulted in the mis-sale.

BMWFS said the dealer confirmed the car had cruise control but was never advertised as having adaptive cruise control. The dealer said Mr M had visited the showroom and purchased the car after viewing it in the dealership. It said that it had no recollection of Mr M specifically requesting adaptive cruise control. It said that earlier models had Adaptive Cruise Control with the Driver Assistance pack, but in later models like the one Mr M had now acquired, only models with Driver Assistance pro had this option.

It said that it did go through the full specification with Mr M before he agreed to buy it.

BMWFS said that they had reviewed the manufacturer's website, the new vehicle invoice for Mr M's car, and their online systems that listed everything included on the car they'd supplied to Mr M. They also discussed the complaint with the supplying dealer.

They said they found no evidence that adaptive cruise control was an option that was available on the car they'd supplied to him, so they didn't agree that the car had been mis-sold.

Our investigator looked into things but didn't uphold the complaint. She said there was no evidence BMWFS misrepresented the features of the car at the point of supply.

Mr M didn't agree, 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.

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. But I want to assure Mr M and BMWFS that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr M acquired the car under a hire purchase agreement. Our service is able to consider complaints relating to these sorts of regulated consumer credit agreements.

I think section 56 of the Consumer Credit Act 1974 is relevant here. This provision has the effect of deeming the supplying dealer to be the agent of BMWFS in any antecedent negotiations. So BMWFS is responsible for the negotiations the supplying dealer carried out direct with Mr M before he entered into the agreement.

I need to consider whether or not there has been a misrepresentation: that is where a false statement of fact has been given, and that statement induced Mr M to buy that car.

Mr M has supplied an email exchange he had with a dealer in 2018. This references "active cruise control" and Mr M says it shows he has always been clear about his requirement for the car to have active cruise control. But I don't think this is relevant as it relates to a different car from a different year, and specifications and needs change over time.

In an email exchange in June 2022, after the dealer sends Mr M a video link to a car, and the full specification, Mr M asks the dealer to "*highlight anything that's not in the car which I have now if you can. Lumbar support is not in, correct?*". He doesn't mention adaptive or active cruise control. It looks like the dealer never responded to his request to highlight differences in specification.

The dealer did send Mr M a "personalised overview" of the car the day before he collected it. This included a link to the manufacturer's brochure, and highlighted the features and function in the model.

And on 6 September 2022 Mr M asked the dealer to provide him with a copy of the car specification. This is after he has collected the car and realised it didn't appear to have adaptive cruise control. In this email he describes that feature as "*a must*", and a "*deal breaker*"

I've seen the car order form presented to Mr M when he collected the car. It lists a number of options and standard options. There is no mention of adaptive or active cruise control. But it does include "*cruise control – speed limiting function (LIM button)*".

This form is signed by Mr M. So I'm satisfied he was provided with key information about the car before he left the dealership. It appears to me that he had the opportunity at this time to ask about the full functionality of the cruise control feature on this car. I appreciate that Mr M said he wasn't given hard copies of the paperwork, and that he had to sign the documents on an electronic device. But I'm still satisfied he was provided with the full list of features, and had sufficient opportunity to ask about what he's later described as a deal breaker.

The evidence is incomplete. I can't say for certain what exactly was discussed between Mr M and the dealer. But I've not been shown sufficient evidence that Mr M specifically requested the adaptive cruise control feature in any correspondence with the dealer, including the messages sent between January 2022 and August 2022, or before he left the dealership with the car on 6 September 2022. He's discussed specifications on a number of occasions, and he's asked about a number of features and options, including for example, the visibility pack. But I can't see any exchange where he's specifically asked for the cruise

control feature he described. I've quoted other examples above of issues he raised and questions he's asked, and these show that he never mentioned adaptive cruise control as a must, prior to acquiring the car.

And critically I've seen nothing to suggest that the dealer confirmed the car did have the feature he said he was looking for.

I should also point out that even if I were to find on balance he was misled about the adaptive cruise control feature, I'd only have grounds to direct BMWFS to allow rejection (for that issue at least). That would still leave him in the position that the dealer offered: with the cancellation of this agreement, and a new agreement being necessary on a different model at a potentially higher price given the market changes in that time.

I'm sorry to hear Mr M is unhappy with the car. I don't want him to think I've discounted his testimony – I haven't. I have to bear in mind that he's given his version of events, and the dealer and BMWFS have given another version.

Where the accounts conflict, as some of them do here, it's helpful to look at what else is available. I've looked at the documentary evidence including the agreement, specification list, and text messages. After viewing those I don't think there was a false statement of fact. So I've found there was no misrepresentation of the car by BMWFS or the dealer.

While I sympathise with Mr M, I've not seen enough to give me the grounds to direct BMWFS to allow him to reject the car.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 January 2024.

Gordon Ramsay
Ombudsman