

## The complaint

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

## What happened

Mr A ordered and acquired a new electric car under a hire purchase agreement with BMWFS in December 2022. The car cost around £73,000. From what I've seen, a week or so afterwards he complained the car wasn't as expected. The main issues were that it didn't come with an internal camera or memory seat button. He said there was a battery warning saying it was hot after a long journey. He also went on to complain it wasn't achieving the range he expected.

The supplying dealer said memory seats can be saved via the driver profile. But it said memory seat buttons weren't mentioned or included for the car Mr A acquired. It said it didn't discuss the internal camera feature because they weren't available to order at that point. The dealer also said the features weren't listed in the specification Mr A agreed to. The dealer said the car would need to be inspected with regards to the battery fault.

Mr A said he repeatedly asked about the specifications of the car and was told it was 'fully specified'. He says at no point was he told that the car wouldn't have memory seat buttons. He says he expected full disclosure. He also said memory seat buttons were shown on the app which is accessed using the car's VIN. He said the internal camera should have been part of the standard specification. He wouldn't have expected it to be separately listed. He said he should have been told it wouldn't be included and that it should have been shown as 'deleted' from the specification. Mr A wanted to reject the car.

The dealer couldn't find any faults with the battery. And it reiterated the specifications of the car were agreed. Mr A raised a complaint with BMWFS. But BMWFS said the interior camera and memory seat buttons weren't in the description or discussed on the order. It said the dealer had discussed Mr A's needs over multiple visits. And it said the published range figures for battery-electric cars, and all cars sold in the UK are based on laboratory tests. It said there would always be a difference between lab tests and real-world driving usage.

BMWFS did ask the dealer why the interior camera wasn't showing as a deletion on the specifications. The dealer said this was a stock vehicle and the order form was discussed with Mr A – so he ought to have been aware it didn't come with an interior camera.

Mr A referred his complaint to our service. He said he'd been affected due to range anxiety, which is the last thing he needs given his health issues. He said he bought another car to compensate him for the lack of range in the car under the BMWFS agreement. He also says he was told he should only charge to 80% which gives him around 150 miles, whereas he was promised around 220 to 250 (on full charge). He accepts he's driven it – around 2,600 miles over around four months, and that he'd need to pay for his use. But he wants to reject it.

Our investigator looked into things but didn't uphold the complaint. In summary, she said she'd seen the memory seat buttons aren't included as standard, and neither is the interior camera. She said Mr A had a specification sheet that he signed, and she had limited evidence of what was spoken about. With regards to the range, our investigator said the car is tested in controlled conditions. Real-world use can be affected by a number of things. She said she can understand why Mr A was disappointed, but she'd not seen enough to recommend BMWFS allow rejection.

Mr A didn't agree. He said our investigator had missed or remained silent on pertinent matters. He said the investigation around specification was flawed and that he was unhappy she'd accepted BMWFS' version of events.

As things weren't resolved, 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. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr A 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.

I'm very sorry to hear Mr A has been unwell. And I thank him for taking the time to bring his complaint to our service.

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

The Consumer Rights Act 2015 (CRA) covers agreements like the one Mr A entered into. The CRA implies terms into the agreement that the quality of goods is satisfactory, fit for their intended purpose and as described. BMWFS is the "trader" for the purposes of the CRA and is therefore responsible for dealing with a complaint about their quality.

I think section 56 of the Consumer Credit Act 1974 is also 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 antecedent negotiations the supplying dealer carried out direct with Mr A.

The evidence is incomplete. On the one hand, I'll never know exactly what was discussed between Mr A and the dealer. He says he was expecting the car to come with the memory seat buttons and an internal camera. I can appreciate what he's saying given he tells us the buttons were shown on an app he had where he needed to input the VIN – indicating the car shown on the app should have been reflective of the actual car. Moreover, it looks like he might have been told the internal camera should have shown as a deleted item on the specification list.

But on the other hand, I've not been shown sufficient evidence the model Mr A acquired came with memory seat buttons or internal cameras as standard. The research I carried out on that model didn't show those functions as standard. I can't see he's paid for those features, so I don't think he's lost out financially. While I can understand why he's unhappy,

I've not seen enough to show that he was misled about the buttons or internal camera. It ends up with one word against another.

I should also point out that even if I were to find on balance he was misled about the memory seat buttons and/or the internal camera, I'd only have grounds to direct BMWFS to allow rejection (for that issue at least) if I were satisfied that Mr A wouldn't have acquired the car had he been informed about there not being an internal camera or memory seat buttons. Based on what Mr A said, and the correspondence I've seen, I can see he was unhappy the car didn't come with those functions, but it's not clear these were deal-breakers and that he wouldn't have still acquired the car had he known they weren't included. It seems that Mr A was more unhappy that he felt the dealer didn't fully disclose everything.

I think the primary issue here is that Mr A isn't achieving the range he expected. He said he has various appointments he needs to attend, and that he gets anxious the car will run out of charge. Again, I can understand his concerns here. As a starting point, I've not seen there's a fault with the car that is impacting the range Mr A is able to achieve, so I therefore don't have grounds to say it wasn't of satisfactory quality. And, for similar reasons to the specifications of the car, I don't know what conversations took place between the dealer and Mr A about the range. It's difficult to reach conclusions on balance the dealer misled him.

I appreciate Mr A says he was misled by the advertised range of the car. But as BMWFS pointed out, this range displayed for the car was the Worldwide Harmonised Light Vehicles Test Procedure (WLTP) test results for this model. I think the WLTP figures have generally been used in order for customers to be able to compare models over the last few years. Of course, Mr A shouldn't have been misled about how many miles he could actually achieve in the car by the dealer. But, as I said above, it's difficult to reach firm conclusions on that when I don't know what was spoken about or have supporting evidence to back that up.

I also note Mr A said he was recommended (after acquiring the car) to only charge the battery to 80%. I think this is recommended to protect the battery life and maximise efficiency. I'm not aware Mr A is unable to charge to 100% for long journeys if required. I've also not seen enough to show he was misled about this.

Therefore, in all the circumstances, I'm sorry to hear Mr A 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. Unlike the courts, I'm unable to take sworn evidence or call witnesses. As I explained, I'm required to resolve complaints quickly and with minimum formality.

Where the accounts conflict, as some of them do here, it's often helpful to look at what else is available. Therefore, I've looked at the documentary evidence including the agreement and specification list. After viewing those, and thinking about the wider circumstances, I don't think Mr A is paying for something he hasn't received. And I've not seen enough to show he was misled about the range or the specification. Mr A is free of course to pursue the complaint by other means, such as through the courts. But, while I sympathise, 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 A to accept or reject my decision before 24 November 2023.

Simon Wingfield  
**Ombudsman**