

IN THE COUNTY COURT BULK CENTRE

Claim No. K6QZ496Q

Between:

(1) EDWARD BUTLER

Claimant

-and-

(2) TESLA MOTORS LTD

Defendant

WITNESS STATEMENT

I, Edward Butler, will say as follows:

1. I am the Claimant in this matter, which is a claim I am bringing under s11 of the Consumer Rights Act 2015 ("CRA 2015"). I am claiming for the Defendant's breach of contract by their failure to deliver the goods to match the description they made.
2. The facts and matters in this statement are, unless indicated otherwise, within my own knowledge or derived from my perusal of the relevant documents.

Where any matter does not come from my own knowledge but is based upon my belief, I will provide the basis for my belief.

3. The Defendant, Tesla Motors Ltd, is a subsidiary of Tesla Inc., a Delaware corporation. They share the same website, www.tesla.com which I made my purchase of the vehicle through. As the Defendant uses the same website as its parent company, I have treated statements on that website as being made and/or endorsed by the Defendant.

Background

4. I purchased a car from the Defendant, taking delivery on 20/06/2019.
5. The purchase was finalised on 18/06/2019 when the Defendant adjusted the price of the vehicle, and I accepted the new price. The price of FSD was increased by £900 from £4,900 to £5,800. The order agreement is at Annexe 1 and was received by me by email on 18/06/2019 15:34.
6. I did not test drive a demonstrator model and made the purchase exclusively through the Defendant's website. I relied on the information presented online by the Defendant, particularly its website and online channels, when making the purchase decision.

Primary Claim

7. At the time of purchase in 2019, the order form on the Defendant's website said that automatic driving on city streets would be, "Coming later this year". This is reproduced in Annexe 2. Therefore, they promised this feature would be delivered at the latest by 31/12/2019.
8. The Defendant later "rolled back" this deadline, but this was done after I had taken delivery of the car. In late 2020, their website changed "Coming later this year" to "Upcoming" when referring to automatic driving on city streets.
9. In the Defence, the Defendant admits this feature has not been delivered, because it states in paragraph 15 that, "The Defendant intends to add "Autosteer on city streets" to the FSD Capability in due course." The Defence is dated 05/04/2023.

10. Automatic driving on city streets is a rich and complex capability that I was excited about. I was induced into purchasing FSD by the promise from the Defendant that automatic driving on city streets would be delivered within approximately 6 months of purchase.
11. If the true situation had been described to me at the time of purchase, e.g. the only part of the FSD Capability that would be delivered by the date of this claim was traffic light and stop sign recognition, I would not have purchased the optional extra. Traffic light and stop sign recognition is a tiny part of the required capability to drive automatically through a city environment.

Secondary Claims

12. FSD Video

- a. In Annexe C of the Defence, the Defendant includes a screen shot of a video demonstrating FSD, specifically automatic driving on city streets, that is 2m07s long and created in October 2016.
- b. I would like to show this video to the court and have a copy of it on my laptop.
- c. This same video was on the Defendant's website in the description of the vehicle at the time of purchase.
- d. It came to my attention in February 2023 that this video was misleading and had been staged, as reported by Reuters on 17th January 2023. (Reproduced at Annexe 4.)
- e. In court testimony, the Defendant's director of Autopilot software, Ashok Elluswamy, describes that the video was created by using 3D maps and a predetermined route as opposed to true automatic driving on city streets.
- f. I watched this video and believed that it was a fair reflection of the Defendant's technology at the time the video was made. I did not think it was unreasonable for the Defendant to deliver FSD by the end of 2019. This contributed to me deciding to purchase the FSD extra.

13. FSD Future Capability Claims

- a. The Defendant claimed on its website on 20th July 2016 that, "As the technology matures, all Tesla vehicles will have the hardware necessary to be fully self-driving with fail-operational capability,

meaning that any given system in the car could break and your car will still drive itself safely.”

- b. Later that year, 19th October 2016, the Defendant published on its website an article entitled, “All Tesla Cars Being Produced Now Have Full Self-Driving Hardware”. The information published makes no reference to this being an L2-only system.
 - c. Also on the 20th July 2016 claim on the Defendant’s website, they make significant claims about the functionality of FSD, reproduced at Annexe 3. Specifically, they talk about the limiting factor being regulatory approval rather than their technical shortcomings, and that the car could be completely autonomous.
 - d. I believed that if the car could drive automatically on city streets by 31/12/2019 (as demonstrated in the staged October 2016 video), that there would be a rapid onwards trajectory to reach fully autonomy. I believed that part of my expenditure for FSD was going to be rewarded after the end of 2019 but in a reasonable timeframe.
14. The Defendant’s website, reproduced in Annexe 2, stated that the price for FSD would likely increase over time as new features were released. This encouraged me to pay for the FSD extra because I had seen the staged October 2016 video and the promises of automatic city driving by the end of 2019. If I had known the October 2016 video was staged and the promise of automatic city driving by end of 2019 was untrue, it would have affected my purchase decision.
15. On the Defendant’s YouTube channel, on 22nd April 2019 they published a video which stated amongst other things that:
- a. They will have developed the software for all the features required to achieve a full self-driving system by the end of the year.
 - b. Their CEO, Elon Musk, emphasised that this system will still require driver attention, but he expects that it will stop requiring driver attention by Q2 2020.

16. [More secondary claims to go here]

- a. Hardware for FSD capabilities (been saying this since 2016, but not true for HW 2.0, what about HW 3.0?)
- b. Almost all circumstances – condensation/fogging, dirty cameras

The Defence

17. In paragraph 7 of the Defence, the Claimant states the price of FSD as £4,833.33 on the final invoice. To my knowledge I have never had an invoice showing this figure, but I believe the Defendant is quoting an ex. VAT figure. Adding VAT to this figure gives £5,800.00, the amount of the claim. I am unable to reclaim VAT as the car is a personal purchase and I am not VAT registered.
18. In paragraph 8 of the Defence, the Defendant refers to Annexe A as the “final invoice”. This is incorrect, they have supplied a draft invoice which was not what the two parties contracted on. The final invoice is in Annexe 1 of this witness statement.
19. In paragraph 12, the defendant says that, “timescales for delivering product updates and features are not contract terms.” I disagree with this, the CRA 2015 makes it clear that the description of goods by a trader forms part of the contract for a purchase of those goods.
20. In paragraphs 14, 17, 18, and 20, the Defendant seems to have fundamentally misunderstood my claim. The claim is not for FSD to have been operational at the time of supply of the vehicle but features as part of FSD to be delivered in the timeframe set out by the Defendant.
21. In paragraph 22, the Defendant states I have had the benefit of Autopilot, Enhanced Autopilot and Traffic and Stop Sign Control. This is incorrect because Autopilot was included in the purchase price (see Annexe 1). The only feature of FSD I have had benefit of is traffic light and stop sign recognition, which I would have gladly missed out on and saved £5,800.

Owner's Manual

22. The Defendant makes reference to a contract term in the MVOA that required me to read the Owner's Manual.
- a. At the date of writing this witness statement, the Owner's Manual was a 295-page PDF document.
 - b. I did not read this manual nor a previous version before entering the purchase contract.
 - c. In any event, I say that the requirement for a consumer to read a 295-page document before purchase of a car is an unrealistic requirement and creates a significant imbalance in the rights of the consumer to

their detriment, so it is an unfair contract term under the CRA 2015 s62 and therefore is not binding.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

ED BUTLER
Claimant

Dated: XX/XX/XXXX

Annexe 1



Motor Vehicle Order Agreement

Vehicle Configuration

Customer		Description	Price (GBP)
Ed Butler		Model 3 Long Range All-Wheel Drive Performance	£48,590.00
[PERSONAL DETAILS REDACTED]		Midnight Silver Metallic Paint	£950.00
		Performance Upgrade	£3,700.00
		20" Performance Wheels	Included
		Performance Brakes	Included
Order Number	RN107675201	Carbon Fibre Spoiler	Included
Order payment	£2,000	Performance Pedals	Included
Reservation payment	£1,000	Black and White Premium Interior	£950.00
Order placed with electronically accepted terms	01/05/2019	Autopilot	Included
*Price includes the UK Government Plug-In Grant of £3,500.		Full Self-Driving Capability	£5,800.00
		Direct Delivery Cost	£850.00
		Price excluding VAT	£50,700.00
		VAT (20%)	£10,140.00
		Price Including VAT	£60,840.00*

Annexe 2

Autopilot advanced safety and convenience features are designed to assist you with the most burdensome parts of driving. All new Tesla cars come standard with driver assistance features such as emergency braking, collision warning and blind-spot monitoring.

Full Self-Driving Capability

- Navigate on Autopilot: automatic driving from motorway on-ramp to off-ramp including interchanges and overtaking slower cars.
- Auto Lane Change: automatic lane changes while driving on the motorway.
- Autopark: both parallel and perpendicular spaces.
- Summon: your parked car will come find you anywhere in a car park. Really.

Coming later this year:

- Recognise and respond to traffic lights and stop signs.
- Automatic driving on city streets.



Select Option

£5,800

Includes the Full Self Driving Computer

Full Self-Driving Capability is available for purchase post-delivery, prices are likely to increase over time with new feature releases

Annexe 3

“When true self-driving is approved by regulators, it will mean that you will be able to summon your Tesla from pretty much anywhere. Once it picks you up, you will be able to sleep, read or do anything else enroute to your destination.

You will also be able to add your car to the Tesla shared fleet just by tapping a button on the Tesla phone app and have it generate income for you while you're at work or on vacation, significantly offsetting and at times potentially exceeding the monthly loan or lease cost. This dramatically lowers the true cost of ownership to the point where almost anyone could own a Tesla. Since most cars are only in use by their owner for 5% to 10% of the day, the fundamental economic utility of a true self-driving car is likely to be several times that of a car which is not.”

Annexe 4

Tesla video promoting self-driving was staged, engineer testifies
By Hyunjoo Jin

Jan 17 (Reuters) - A 2016 video that Tesla (TSLA.O) used to promote its self-driving technology was staged to show capabilities like stopping at a red light and accelerating at a green light that the system did not have, according to testimony by a senior engineer.

The video, which remains archived on Tesla's website, was released in October 2016 and promoted on Twitter by Chief Executive Elon Musk as evidence that "Tesla drives itself."

But the Model X was not driving itself with technology Tesla had deployed, Ashok Elluswamy, director of Autopilot software at Tesla, said in the transcript of a July deposition taken as evidence in a lawsuit against Tesla for a 2018 fatal crash involving a former Apple (AAPL.O) engineer.

The previously unreported testimony by Elluswamy represents the first time a Tesla employee has confirmed and detailed how the video was produced.

The video carries a tagline saying: "The person in the driver's seat is only there for legal reasons. He is not doing anything. The car is driving itself."

Elluswamy said Tesla's Autopilot team set out to engineer and record a "demonstration of the system's capabilities" at the request of Musk.

Elluswamy, Musk and Tesla did not respond to a request for comment. However, the company has warned drivers that they must keep their hands on the wheel and maintain control of their vehicles while using Autopilot.

The Tesla technology is designed to assist with steering, braking, speed and lane changes but its features "do not make the vehicle autonomous," the company says on its website.

To create the video, the Tesla used 3D mapping on a predetermined route from a house in Menlo Park, California, to Tesla's then-headquarters in Palo Alto, he said.

Drivers intervened to take control in test runs, he said. When trying to show the Model X could park itself with no driver, a test car crashed into a fence in Tesla's parking lot, he said.

"The intent of the video was not to accurately portray what was available for customers in 2016. It was to portray what was possible to build into the system," Elluswamy said, according to a transcript of his testimony seen by Reuters.

When Tesla released the video, Musk tweeted, "Tesla drives itself (no human input at all) thru urban streets to highway to streets, then finds a parking spot."

Tesla faces lawsuits and regulatory scrutiny over its driver assistance systems.

The U.S. Department of Justice began a criminal investigation into Tesla's claims that its electric vehicles can drive themselves in 2021, after a number of crashes, some of them fatal, involving Autopilot, Reuters has reported.

The New York Times reported in 2021 that Tesla engineers had created the 2016 video to promote Autopilot without disclosing that the route had been mapped in advance or that a car had crashed in trying to complete the shoot, citing anonymous sources.

When asked if the 2016 video showed the performance of the Tesla Autopilot system available in a production car at the time, Elluswamy said, "It does not."

Elluswamy was deposed in a lawsuit against Tesla over a 2018 crash in Mountain View, California, that killed Apple engineer Walter Huang.

Andrew McDevitt, the lawyer who represents Huang's wife and who questioned Elluswamy's in July, told Reuters it was "obviously misleading to feature that video without any disclaimer or asterisk."

The National Transportation Safety Board concluded in 2020 that Huang's fatal crash was likely caused by his distraction and the limitations of Autopilot. It said Tesla's "ineffective monitoring of driver engagement" had contributed to the crash.

Elluswamy said drivers could "fool the system," making a Tesla system believe that they were paying attention based on feedback from the steering wheel when they were not. But he said he saw no safety issue with Autopilot if drivers were paying attention.

Reporting by Hyunjoon Jin; Editing by Kevin Krolicki and Lisa Shumaker