

The complaint

Mr M acquired a used car in October 2021, by means of a conditional sale agreement with Vauxhall Finance plc. He complains that the car was misrepresented to him. He wants Vauxhall to unwind his agreement, and to agree that the car should be rejected.

What happened

The car Mr M acquired was around 30 months old at the point of supply. It was advertised as having travelled just under 12,000 miles.

Mr M said that, when he took his car for an MOT test in March 2022, he noticed the service booklet recorded that it had travelled a little over 14,000 miles at the point of supply (and not just under 12,000 miles, as advertised). He complained to Vauxhall, and investigation showed that the service booklet mileage was correct.

The supplying dealership told Vauxhall that the mileage advertised was caused by an administrative error, for which it offered to compensate Mr M. But the dealer pointed out that the car was not faulty. For these reasons, Vauxhall did not uphold Mr M's complaint.

Mr M then referred his complaint to us. He told us that he was looking to Vauxhall to put things right, and that he was not considering the dealer's offer to compensate him.

Our investigator said:

- Vauxhall was just as responsible as the dealer for ensuring that Mr M received correct information, before he agreed to acquire the car
- So, the car being without faults, and the mileage discrepancy being an administrative error, were insufficient reasons to reject his complaint
- Misrepresentation required two things to happen, both of which must have occurred –
 - a false statement to have been made (wrong mileage advertised)
 - the false statement to have induced Mr M into agreeing to acquire

Although it was clear that a false statement had been made, our investigator did not think that this statement induced Mr M to enter into his conditional sale agreement. In other words, our investigator thought that Mr M would still have entered into his agreement, if he had been told the correct mileage before he agreed to acquire the car

Our investigator noted that the difference between the correct and advertised figures was about 2,500 miles, which he felt was a very small portion of the distance generally travelled by cars.

Our investigator used motor trade guides to calculate the difference in price that should have been charged for Mr M's car, if it had been advertised with its correct mileage – this difference was estimated to be between £150 and £200.

So, our investigator's view was that only one of the two things, required for misrepresentation to happen, occurred when Mr M acquired his car. This meant our investigator concluded that:

- Misrepresentation did not happen, when Mr M acquired his car
- As a consequence, rejection of the car would not be appropriate

But our investigator's view was also that Vauxhall should not have rejected Mr M's complaint. In order to put things right and to resolve this complaint, our investigator concluded that Vauxhall should pay compensation of £200 to Mr M, to reflect the difference in price that should have been charged for his car.

Mr M disagreed with our investigator's conclusions, and so this complaint was referred for review by an ombudsman.

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.

Where evidence is incomplete, inconsistent or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

Vauxhall has a responsibility to ensure that goods of satisfactory quality, and corresponding to their description, have been supplied. This means a reasonable person would have regarded the goods as satisfactory, taking into account all relevant circumstances. But there are limits to these responsibilities. In particular, matters complained about must be present or developing at the point of supply.

We determine complaints by reference to what is fair and reasonable in the circumstances of the case. We tell a business (Vauxhall, in this case) to put things right, if its actions made a difference and a consumer (Mr M, in this case) lost out.

When considering what should be done to put things right, our guiding principle is putting consumers back into the position they would be in, if the business had not done something wrong.

Mr M acquired his car in October 2021, and he did not complain to Vauxhall until March 2022. But his complaint is clearly about a matter present at the point of supply. So, I am considering his complaint in the same way as I would do, if it had been made immediately or very soon after the point of supply.

I agree with our investigator and Mr M that his car did not fully correspond to its description. So, I need to consider how Mr M lost out as a result of this difference (the advertised incorrect mileage), and what should be done to put things right.

Misrepresentation is a legal term with a specific meaning. Our investigator explained the term to Mr M. And our investigator concluded that misrepresentation had not happened, when Mr M acquired his car. Consequently, our investigator also concluded that rejection of Mr M's car would not be appropriate to put things right.

For the same reasons as our investigator, I agree with these conclusions. On the balance of probabilities, I think Mr M would still have acquired the car, if its correct mileage had been advertised. And Mr M accepted that he might have done so, in a July 2022 email he sent to our investigator.

Putting things right

I agree with our investigator that Mr M lost out on the price at which he acquired his car, because of the incorrect mileage. And I think the way in which our investigator estimated the extent of this loss was appropriate. My conclusion is that compensation of £200 to put things right for Mr M is fair and reasonable.

My final decision

For the reasons explained above, my final decision is that I uphold this complaint. In full and final settlement, I order Vauxhall Finance plc to pay compensation of £200 to Mr M.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 30 September 2022.

Roy Mawford
Ombudsman