

The complaint

Mr N is complaining that Santander Consumer (UK) Plc ("SCF") misrepresented a vehicle they supplied to him.

What happened

In April 2021, Mr N entered into a conditional sale agreement with SCF to acquire a car. The agreement states the deposit was £2,201 and Mr M borrowed £16,887 – the cash price of the vehicle was £19,088. The agreement required Mr M to make 48 monthly payments of £272.78 and a final payment of £8,858.

In April 2024, Mr N was looking to sell the vehicle and took it to a dealer. Mr N said the dealer ran a check on the vehicle and said there was a discrepancy in the mileage on the vehicle that dated back to 2018. On that basis, Mr N said, the dealer wouldn't buy the car from him.

Mr N complained to SCF that the car had been misrepresented to him. He said the car had been advertised as having done 33,000 miles and having had a clear HPI check. But when Mr N did his own HPI check in April 2024, it showed that the mileage of the car had been reported as 41,539 in July 2018 before being reported as 29,107 in May 2019 – so there was a clear discrepancy.

In their response, SCF said they'd spoken to the dealership that advertised the car. The dealership told SCF they'd always do an HPI check before selling a car. And they provided two checks they'd carried out recently which didn't show any discrepancies. SCF also said the discrepancy Mr N had noticed could simply have been an incorrect mileage entry someone had made when requesting a quote for insurance. They said they hadn't seen any evidence of mileage alteration and didn't uphold Mr N's complaint. SCF offered to refund to Mr N the cost of the HPI check he carried out as a gesture of goodwill.

Mr N wasn't happy with this outcome, so he brought his complaint to our service and one of our Investigators looked into it. Our Investigator said the evidence Mr N had provided was persuasive and she thought the car had been misrepresented to him. Our Investigator said SCF should allow Mr N to reject the car and should pay him £100 for the distress and inconvenience that had been caused.

Mr N agreed with our Investigator's findings but wanted a refund of the payments he'd made for the vehicle. SCF rejected our Investigator's findings, saying they hadn't seen conclusive evidence of the discrepancy in the mileage. They asked for an Ombudsman's decision – and the complaint's come to me.

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 upholding the complaint for broadly the same reasons as our Investigator – I'll explain more below.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. SMF were the supplier of the goods under this agreement and are therefore responsible (under section 56 of the Consumer Credit Act 1974) for a complaint about any misrepresentation of the goods.

The Consumer Credit Act 1974 also says that for a misrepresentation to have taken place, the consumer must have been given a false statement of fact, and that statement must have induced them into entering into a finance agreement to acquire goods when they otherwise wouldn't have.

What I therefore need to consider is whether Mr N was given a false statement of fact about the car he acquired – and, if so, whether he'd have entered into the same conditional sale agreement with SCF if he hadn't been given that false statement of fact.

Was there a false statement of fact?

Mr N has provided evidence from the website on which he saw the car advertised. This evidence shows the car was advertised with an odometer reading of 33,000 miles and with a clear HPI check.

SCF haven't been able to provide evidence of the HPI check that they say would have been done at the time. So, I'm unable to see that the car did have a clear HPI check as was advertised.

Instead, SCF have provided two checks run in April and May 2024. Both of these checks show no mileage discrepancies for Mr N's vehicle. However, neither of them are HPI checks – they were both done by different providers of vehicle checks. One of the checks has only two data points in its mileage data, one recorded in July 2019 and one in July 2020. I don't find this report at all persuasive. The other report includes nine data points. So it is more persuasive. But it doesn't include any mileage readings before July 2019. And, as stated, it's not an official HPI check.

Mr N's provided evidence of an HPI check he requested in April 2024. I note SCF observed that Mr N's HPI report didn't have the car's registration plate or VIN number on it, but I've since obtained from Mr N a version of the report that does identify the vehicle. This HPI check shows that the mileage of the car was recorded by an insurance company as 41,539 in July 2018 and then 29,107 by the manufacturer in May 2019. So there's a clear mileage discrepancy on the report. Given the dates are both well before Mr N acquired the vehicle, I think it's likely this discrepancy would have appeared on any HPI check done at the time.

SCF said that the higher mileage figure might simply have been input incorrectly when a previous owner of the vehicle was looking for an insurance quote. But Mr N has provided emails from the operators of the National Mileage Register which say the figure input in July 2018 was from an insurance report when the car went into a garage. One of the emails says: *"Due to the difference in mileage readings it would indicate the vehicle has had its mileage adjusted. I would recommend that you do not purchase the vehicle."* The other email attaches photos of the car's odometer, registration plate and vin number and says: *"all the images are from the same date 16/07/2018 with mileage reading at 41,539 miles"*.

In summary, the evidence provided by Mr N persuades me that there was a mileage discrepancy on the vehicle. I've seen no evidence that there had been a clear HPI check on the vehicle when the vehicle was advertised as having one. And the HPI check I have seen

suggests the mileage on the odometer ought to have been considerably higher than 33,000 miles. So, I'm satisfied a false statement of fact was made to Mr N, in the advert for the car, before he acquired it.

Did the false statement of fact induce Mr N to acquire the car?

Mr N says he wouldn't have bought the car if he'd been aware of the mileage discrepancy. The evidence suggests the "true" mileage of the car was at least 12,000 more than was stated on the advert. And it suggests that the car had been tampered with.

Having considered the valuation of the vehicle in 2021, I don't think the difference in mileage would have significantly impacted the price of the car – an independent valuation tool suggests that with mileage of 45,000, the market value of the car would have been around £20,700. This was around £1,000 less than the same tool suggests with a mileage of 33,000 – but it's still significantly less than the cash price Mr N agreed.

However, I do think the fact that there was a mileage discrepancy would have impacted Mr N's decision. It would have meant he couldn't be sure whatever mileage figure he was told was correct, and would have meant that the car had likely been tampered with at some point in the past. What's more, as Mr N's now found, it would make the car much more difficult to sell in the future.

On balance, whilst I can't be sure what would have happened if the car hadn't been falsely advertised, I am persuaded that Mr N likely wouldn't have bought it.

Putting things right

Because I'm satisfied Mr N wouldn't have entered into this agreement if SCF hadn't misrepresented the car, SCF need to cancel the agreement with nothing further to pay.

It is fair, however, that Mr N pays for the use he's had of the car. I'm satisfied that means he's not entitled to the refund of any monthly payments up until the date of this decision.

I'm aware Mr N's hoping for a refund of at least some of his monthly payments. He told us he stopped using the car some time ago because he didn't trust it. He said because he didn't know the car's true mileage he didn't know when it would break down and he was concerned about having to pay for expensive repairs. However, I haven't seen any indication that Mr N experienced any faults. And while I have some sympathy for his situation, I can't say his decision to stop driving the car was reasonable in the circumstances. So I'm not directing SCF to refund any monthly payments.

However, it's clear Mr N has suffered some distress and inconvenience as a result of the misrepresentation. He expected to be able to sell the car to a dealership and I'm sure it would have been upsetting that he couldn't. He's then had to investigate the mileage discrepancy which would have been frustrating and time consuming. I think £100 is a fair amount for SCF to pay Mr N to reflect the distress and inconvenience caused. In addition, SCF should refund to Mr N the cost of the HPI report, at £19.99.

My final decision

As I've explained above, I'm upholding Mr N's complaint. To settle the matter, Santander Consumer (UK) Plc need to:

- End the agreement with nothing further to pay;
- Collect the car at no further cost to Mr N;

- Refund Mr N's deposit (if any part of this deposit was made up of funds paid through a dealer contribution, SCF is entitled to retain that proportion of the deposit);
- Refund the cost of the HPI report;
- Pay Mr N 8% simple interest per year on each refund calculated from the date of each payment to the date of settlement;
- Pay Mr N £100 for the distress and inconvenience caused; and
- Remove any adverse information relating to the agreement from Mr N's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 7 May 2025.

Clare King
Ombudsman