

## The complaint

Mrs W complains that she was misled about increasing the mileage allowance for a car that she acquired using a conditional sale agreement with Santander Consumer (UK) Plc trading as MG Motor Financial Services ("SCUK").

## What happened

Mrs W entered into a conditional sale agreement for a car with SCUK in November 2021. Mrs W says she entered into this on the basis that she could increase the mileage once during the term of the agreement. However, she subsequently learnt that this wasn't, and was never, possible.

Mrs W complained to SCUK in November 2023. They agreed that the dealership had given her incorrect information about increasing the mileage, but she wasn't able to increase this as explained in the terms and conditions of the agreement. SCUK offered Mrs W £100 for the distress and inconvenience she'd been caused.

Unhappy with SCUK's response, Mrs W referred her complaint to our service. Our investigator didn't recommend that it should be upheld. In summary, she said the terms and conditions of the agreement stated that Mrs W couldn't increase the mileage, although she agreed the dealership gave her incorrect information about this.

Mrs W didn't agree and so her complaint has been passed to me for a decision.

I issued a provisional decision on 16 January 2025, relevant extracts of which I include below and which forms part of my final decision.

*'The conditional sale agreement that Mrs W entered into was brokered by the dealership on behalf of SCUK. One of the effects of Section 56 of the Consumer Credit Act 1974 is that any representations made by the credit broker (in this case the dealership) are made in their capacity as agent of the finance provider (here, SCUK). This means SCUK can be held responsible for the actions of the dealership when it brokered the finance agreement. I've looked at the documentation that was generated for this transaction. In doing so, I've seen that the conditional sale agreement included a voluntary termination clause which allowed Mrs W to terminate the agreement at any time before the final payment. Doing so would cap her liability to a minimum of half the price under the agreement. But both Mrs W and SCUK say the agreement had an annual mileage allowance of 6,000 miles. This meant that for any additional miles Mrs W had driven above that allowance, she'd need to pay 14.9p per mile.'*

*Mrs W says she only agreed to take out this agreement because she was given assurances that she could increase the mileage allowance at a later date. In my view, there's no dispute that she was given those assurances. I've seen a copy of an e-mail sent to Mrs W that says exactly that, and SCUK accepted in their response to her complaint that the dealership gave her that information incorrectly. I can also see that Mrs W did subsequently approach SCUK to request the mileage limit be increased and was told that she couldn't. And Mrs W has*

*been consistent and credible about why she needed a higher annual allowance than 6,000 miles.*

*Given the above, I think Mrs W was given incorrect information about the mileage allowance. However, I also think she was given incorrect information about the key features of the agreement.*

*I say this because the conditional sale agreement doesn't actually have a mileage allowance at all. Mrs W could have driven as many miles as she wanted without paying anything extra. As it seems both parties have said there was a mileage allowance, it's more likely Mrs W was misled.*

*The reason both parties appear to think there was a mileage limitation is because Mrs W signed a separate 'sales agency agreement' with SCUK at the same time, and it's this agreement that has the mileage allowance.*

*The sales agency agreement sets out that there is a 6,000 miles per annum allowance. And if Mrs W were to exceed that allowance, SCUK would apply a charge of 14.9 pence per mile. So, I can see why Mrs W assumed – and it appears SCUK and its agent also assumed – the conditional sale agreement had a mileage allowance attached to it. But in my view the sales agency agreement is a separate agreement entirely.*

*The sales agency agreement is a contract between Mrs W and SCUK that sets out that SCUK will guarantee to sell the car at the end of the conditional sale agreement for her, if she wants them to. If Mrs W had exceeded the mileage allowance, the agreement entitled SCUK to deduct those charges from the overall sales price it achieved.*

*But as the finance agreement Mrs W had entered into was a conditional sale agreement, it included a right to voluntary termination and to hand back the car at any time before the final payment. So, there was no need for her to instruct SCUK to sell the car – it already belonged to SCUK, not Mrs W. For this reason, I don't understand why Mrs W was asked to sign and enter into the sales agency agreement at all. It seems it had no benefit to her, and it appears this documentation is what has caused confusion here, as to what Mrs W's rights under the conditional sale agreement actually were.*

*It appears that SCUK told Mrs W that she couldn't increase the mileage allowance when she contacted them to request this. So, it seems that SCUK didn't correctly inform Mrs W what her rights were under the agreement. It should have told her there was no limit rather than saying she couldn't increase a non-existent one.*

*So, taking everything into account, I don't think SCUK's agent brokered the agreement with sufficient care nor acted fairly towards Mrs W. Had Mrs W been given accurate information, she would never have needed to query mileage usage or request to increase it. She would have been able to drive the car as much as she wanted and decide later whether to hand it back or buy it outright.*

*For the reasons I've given above, I don't think the nature of the conditional sale agreement and its key features were made clear to Mrs W.*

*Putting things right*

*It seems likely that Mrs W would have entered into the conditional sale agreement had she been given clear information. This is because there was no mileage restriction. So, it appears that it had all the features she wanted and was expecting from a finance agreement,*

*although Mrs W didn't actually know that, because of the way SCUK and its agent brokered it.*

*However, Mrs W has explained that this whole episode has left her no longer wanting the car. I think the fairest solution here is to allow Mrs W to end the conditional sale agreement and for SCUK to take the car back at no further cost to her. I also think it fair for her to be refunded the £2,000 deposit she paid, and for interest at 8% simple each year to be added to this from the date of payment to the date of settlement.*

*Mrs W has presumably had the benefit of using the car, so I think the monthly repayments she has been paying for it represents a fair price for usage. So, I'm not planning on recommending that SCUK refund any of the monthly repayments. She had though a stressful experience because of what's happened. Taking everything into account, I think SCUK should pay her £200 compensation for the distress and inconvenience she's been caused'.*

I asked both parties to provide me with any further comments or evidence they wanted me to consider.

Mrs W replied saying she agreed with my provisional decision.

Santander didn't though agree. They said the annual mileage limit would only apply if Mrs W decided to return the car at the end of the agreement instead of paying the final payment. And they said that although they accepted that Mrs W was misadvised at the point of sale, this wasn't a deliberate attempt to mis-sell it and my proposal to allow her to reject the car after more than three years was 'draconian to say the least'. Santander said they were prepared to increase the mileage allowance if Mrs W decides to hand the car back at the end of the agreement in December 2025.

### **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'd like to thank both parties for their replies to my provisional decision.

I've considered what Santander has said (as outlined above). I have no reason to doubt what they've said that there was no deliberate intent to deceive Mrs W about the mileage allowance limit. However, the fact of the matter is Mrs W was misadvised and entered into the arrangement as a result of that.

I also still don't understand why the sales agency agreement included the mileage restriction, as it clearly did, and why Santander maintains that the mileage restriction was only part of the conditional sale agreement. The sales agency agreement is an entirely separate contract to the conditional sale agreement. And the terms of the sales agency agreement set out that the mileage restriction would be imposed if Mrs W were to agree for Santander to sell the car. But, as I said in my provisional decision, there was no need for her to instruct Santander to do this; Santander owns the car, and I can't see how the sales agency agreement was of any benefit to her and why it would have a mileage restriction included within it.

In view of the unclear picture of where the mileage restriction sits, and the acknowledged misrepresentation of the mileage limit itself, I still think it reasonable for Mrs W to be allowed to return the car. Although Santander has offered to increase the mileage allowance at the end of the agreement, that doesn't give Mrs W much certainty now and may well lead to

another dispute further on down the line. If Mrs W wishes to discuss this with Santander and reach an agreement on this point that then settles her complaint, I certainly won't stand in the way of that. But, as it stands, I still think it reasonable for Mrs W to be allowed to give the car back at no further cost to her, and for compensation to be paid to her in line with what I set out in my provisional decision.

### **Putting things right**

I think the fairest solution is to allow Mrs W to end the conditional sale agreement and for SCUK to take the car back at no further cost to her. I also think it fair for her to be refunded the £2,000 deposit she paid, and for interest at 8% simple each year to be added to this from the date of payment to the date of settlement.

Mrs W has presumably had the benefit of using the car, so I think the monthly repayments she has been paying for it represents a fair price for usage. So, I'm not recommending that SCUK refund any of the monthly repayments. Mrs W had though a stressful experience because of what's happened. Taking everything into account, I think SCUK should pay her £200 compensation for the distress and inconvenience she's been caused.

### **My final decision**

For the reasons I've set out above, I uphold this complaint. I direct Santander Consumer (UK) Plc trading as MG Motor Financial Services to take the action I've set out in the 'putting things right' section of my decision.

If SCUK considers that they need to deduct tax from the interest element of my award, they should provide Mrs W with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 7 March 2025.

Daniel Picken  
**Ombudsman**