

Complaint

Mr S has complained about a car that CA Auto Finance UK Ltd ("CA Auto") supplied to him through a hire-purchase agreement.

Background

In August 2023, CA Auto provided Mr S with finance for a used car. The car was just over seven years old and the sales invoice stated that it had mileage of 63,112 at the time of the sale.

The cash price of the vehicle was £12,549.00. Mr S paid a deposit of £2,000.00 and applied for finance to cover the remaining £10,549.00 he needed to complete the purchase. CA Auto accepted Mr S' application and entered into a 57-month hire-purchase agreement with him. The balance to be repaid of £14,767.87 (which does not include Mr S' deposit) was due to be repaid in 56 monthly instalments of £258.91 followed by a final payment of £268.51.

Mr S says that he discovered significant discrepancies in the vehicle's mileage records shortly after taking delivery of the car. A vehicle health check recorded the mileage of the car at 50,000 in January 2019 and this conflicted with the mileage recorded at the time of the car's first MOT which recorded a mileage of 44,552 in April 2019.

Furthermore, a HPI check showed a recorded mileage of 72,000 in July 2023, which was a month before Mr S took possession of the car, with the odometer reading close to the 63,112 stated on the sales invoice. Mr S was concerned about potential tampering with the car's mileage and complained to CA Auto about this.

CA Auto issued its final response to Mr S' complaint in April 2024. In essence, CA Auto didn't uphold Mr S' complaint. It said that this was because it didn't consider that there was anything wrong with the car that it had supplied to Mr S and it wasn't persuaded that the mileage history of the car was incorrect. Mr S was dissatisfied at this and referred his complaint to our service.

Mr S' complaint was subsequently reviewed by one of our investigators. She was not persuaded that a misrepresentation had taken place during the sale of the car. Mr S disagreed with our investigator's view and asked for his complaint to be passed to an ombudsman for a final decision.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm satisfied that what I firstly need to decide in this case is whether there was a misrepresentation and/or mis-description of the car which caused Mr S to lose out as a result. Should it be the case that I think there was, I'll then need to decide what's fair, if anything, for CA Auto to do to put things right.

Having carefully considered matters, I'm not persuaded that a misrepresentation of the car was made prior to Mr S taking custody of it. I'm therefore not upholding Mr S' complaint. I'll explain why in a little more detail.

Mr S' agreement, the Consumer Credit Act 1974 ("CCA") and why I'm able to consider this complaint

The finance agreement in this case is a regulated hire-purchase agreement, which we are able to consider complaints about. Under the hire-purchase agreement, CA Auto purchased the vehicle from the dealership Mr S visited.

Mr S then hired the vehicle from CA Auto and paid a monthly amount to it in return. CA Auto remained the legal owner of the vehicle under the agreement until Mr S' loan was repaid.

Under s56 of the CCA, CA Auto, as Mr S' credit provider, is responsible for any "antecedent negotiations" that took place at the time of the sale of the car. These antecedent negotiations include any negotiations *"conducted by a credit-broker in relation to goods sold or proposed to be sold by the credit-broker to the creditor before forming the subject-matter of a debtor-creditor-supplier agreement"*.

Therefore, CA Auto could be responsible for any misrepresentations the supplying dealer made to Mr S during the course of negotiations. As this is the case, I've considered whether any misrepresentations were made to Mr S during the negotiations.

Were any misrepresentations made to Mr S?

Mr S has said that there are significant discrepancies in the car's mileage history. He effectively argues that the mileage of the car was therefore misrepresented to him during negotiations.

In order to agree that misrepresentations regarding the car were made, I would need to be persuaded of two things. Firstly, I would need to be satisfied that it is more likely that not that a 'false statement of fact (or law)' was made to Mr S. Secondly, I would also need to be persuaded that the false representation induced Mr S into entering the hire-purchase agreement, in circumstances where he otherwise wouldn't have done so.

As this is the case, I'm satisfied that my determination of Mr S' complaint turns on whether a false statement was made, regarding the mileage of the car, to Mr S prior to him acquiring it. I'll now proceed to considering whether this is the case.

Was a false statement of fact (or law) made to Mr S during negotiations for the car?

As the investigator explained in her assessment, the mileage of the car isn't included on the hire-purchase agreement itself. Nonetheless, the sales invoice states that the mileage of the car 63,112 at the time it was supplied to Mr S in August 2023. I've also noted that Mr S hasn't argued that there was any sort of discrepancy between the mileage recorded on the odometer and that recorded on the sales invoice. So I'm satisfied that the mileage on the car was represented as being around 63,100 during negotiations.

Mr S has provided a copy of a HPI check which shows that a mileage entry of 72,000 miles was recorded a month before he acquired the car in July 2023. Mr S has also provided, what he believes to be further inconsistencies in the car's mileage history in the form of an extract from a vehicle health check carried out on the car, in January 2019. This records a mileage of 50,000 on the car and conflicts with the mileage of 44,522 which was recorded at the time of the car's first MOT some three months later in April 2019.

Mr S argues that this conflicting information suggests that the true mileage of the car was higher than the 63,112 represented during negotiations for the sale. Therefore, in his view, the supplying dealer made a false statement of fact to him, regarding the vehicle, during the course of negotiations.

I can understand why Mr S may be concerned at the information he's found on the HPI check and I've considered everything he has said and provided.

At this point, it may also help for me to explain that I will reach my decision on (whether a false statement of fact was made) the balance of probabilities. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I must reach my conclusion based on what I consider is more likely than not to have happened in light of the available evidence and the wider circumstances.

The car's MOT history

Publicly available information on the car shows that the following mileage was recorded at the time of the car's MOTs as set out below:

Date of MOT	Mileage
12 April 2019 (1st MOT)	44,522
24 March 2020 ¹	60,692
7 April 2021	62,285
9 April 2022	62,813
12 April 2023	63,033
10 April 2024	68,605

I think it's fair to say that the mileage history recorded at the time the MOTs were completed is consistent. I do accept that the number of miles completed in the car after March 2020 was low. However, given the much slower pace of the increasing mileage directly coincides with the onset of the pandemic, I don't think that this is concerning, or suggestive of any inaccurate entries having been made.

The information on the vehicle health check

Mr S has said that he has found more than one discrepancy in the car's mileage records. Firstly, he has provided an extract from a vehicle health check that was carried out in January 2019. Mr S says that as the mileage on the car was recorded as 50,000 at this time, the mileage recorded three months later at the time of the first MOT cannot be correct. I've thought about what Mr S has said.

In considering this matter, I've also looked up the online service history of the car which is publicly available on the manufacturer's website. In doing so, I've noted that the online service history shows that the service due at the sooner of 42,000 miles or 48 months, was completed on 12 December 2018.

¹ There are three MOT tests recorded for the vehicle on this date. The information suggests that the car failed its MOT on the first two occasions. The first failure was down to the windscreen washers and a problem with the tyre pressure monitoring system. The second test was failed because the windscreen wipers did not clear the windscreen effectively.

The mileage recorded at the time of this service in December 2018 was 41,473. The date on the health check Mr S has provided is 8 January 2019 – so less than four weeks later. It's also fair to say that this health check appears to have taken place at the same place as the 42,000 mile service.

I don't know why a health check would have been required for the car so soon after the car had been serviced by the same manufacturer garage and a mere matter of months before it was due to have its first MOT. I accept that it is possible the car could have completed the 8,500 miles or so that would have seen it reach 50,000 miles by the time of the health check. However, this would be a lot of miles to cover in such a short period and it seems to me that the mileage recorded at the time of the car's first MOT (some 3,000 more than it was in December 2018 around four months later in April 2019) is more realistic.

In any event, I find it a little strange that the mileage would have been exactly 50,000 at the time any health check may have been completed. I think that the use of a round figure such as this is indicative of a rounded up, or approximate figure being used at this time, rather than the actual mileage showing on the odometer.

Furthermore, given it is the mileage on the health check that appears to be out of kilter with the car's online service record and the car's MOT history, it seems to me that it is the health check that is more likely than not to be inaccurate. As this is the case, I find the persuasiveness of the health check to be limited at best and I'm not persuaded that it demonstrates that the mileage recorded on the odometer, or the sales invoice, was misrepresented to Mr S, either during the negotiations for the car, or at the time it was supplied.

Mr S has also said that he has found a second mileage discrepancy on an HPI check that he has obtained. I'll now proceed to considering this.

The HPI check

As I've explained Mr S has also provided a copy of a HPI check, which was carried out on 12 March 2024. This HPI check has a significant amount of information on it. Amongst other things, it includes information on things like whether the car was ever recorded stolen, whether it was ever an insurance write off and whether there was outstanding finance on it.

The report also highlights what it refers to as a mileage discrepancy. I presume that this is in relation to the mileage that Mr S provided – which is likely to have been the mileage recorded on the odometer – at the time he requested this check. I say this because the report advises Mr S to double check the mileage that he provided.

In any event, the important thing to note is that the mileage history section of this report contains the mileages recorded on the National Mileage Register. It shows the date a mileage was recorded, the entity that recorded it and what the mileage was.

The vast majority of the entries were recorded by the manufacturer of the car and the Vehicle and Operator Services Agency² ("VOSA"). There are also a couple of entries from the British Vehicle Rental and Leasing Association ("BVRLA") and an entry from an insurer. I mention the BVRLA and insurer entries for completeness, rather than because there is

² It is unclear why the HPI check is showing entries as being recorded by VOSA. This is because VOSA was the agency responsible for MOT and vehicle testing from 3 April 2003 to 31 March 2014. However, from 1 April 2014 VOSA was merged into the newly created Driver and Vehicle Standards Agency ("DVSA") and it is the DVSA that has been responsible for MOTs since then. For ease of reference, I will refer to these entries as DVSA entries.

anything particularly important about them.

The manufacturer mileage readings broadly correspond with the online service history recorded for the car. For example, the car had its 21,000 mile or 24-month service in August 2017. The mileage recorded on the service history is 21,209 and this is also the first mileage recorded on the HPI check. As I've explained previously, the mileage recorded at the time of the 42,000 or 48-month service, which took place in December 2018, was 41,473 and a similar mileage is reported by the manufacturer on the mileage history a couple of days later.

It's also fair to say that the mileage history on the HPI check has other entries recorded as being from the manufacturer which aren't present on the online service history. That isn't surprising as the owner of the car may have taken the car into a garage for diagnostic checks or other work outside of the service intervals.

In any event, there are two important things to take from the entries attributed to the manufacturer. Firstly, there isn't an entry relating corresponding to the vehicle health check that Mr S has provided. Indeed there isn't anything to indicate that a mileage of exactly 50,000 was ever recorded on the National Mileage Register.

Secondly, there isn't anything that is inconsistent or difficult to explain in terms of the mileages that have been recorded as having been reported by the manufacturer. For example, the manufacturer didn't record a lower mileage after recording a higher one on a previous entry.

I now turn to the DVSA entries. Having reviewed these entries against the vehicle's MOT history, all bar one of these entries, appear on the MOT history. The DVSA first records a mileage, of 44,522, on 12 April 2019, which corresponds with the date of the first MOT and what's on the MOT history. It records a second entry, of 60,692, on 24 March 2020, which corresponds with the date of the car's second MOT and the mileage on the MOT history.

The third DVSA entry, of 62,285, on 7 April 2021, corresponds with the date of the car's third MOT and also what is recorded on the MOT history. The DVSA's fourth and fifth entries of 62,813 and 63,033 also correspond with what is on the MOT history for the fourth and fifth MOTs which took place on 9 April 2022 and 12 April 2023 respectively. However, there is a sixth DVSA entry which is recorded on 12 July 2023 and it records the mileage of the car as being 72,622 at this time. This is the entry that Mr S is concerned about.

Nonetheless, the MOT history for the car doesn't show that an MOT was carried out on the car at this stage. Indeed, I've set out the full MOT history of the car up to 10 April 2024, including the failures that occurred in March 2020, and an MOT wasn't carried out between 12 April 2023 and 10 April 2024. It's also unclear to me why a further MOT would have been necessary a mere three months after the previous one. I'm also mindful that this entry suggests that the car would have been driven over 9,000 miles in the three months between 12 April 2023 and 12 July 2023.

Again, much like the information in relation to the health check, I don't rule out the possibility that the car was driven for this many miles in this period. That said, given as an MOT wasn't due on the car at this stage, the car's MOT history does not show an MOT being carried out then and the DVSA typically records mileages (using its VOSA identifier) on the National Mileage Register after an MOT has been carried out, I think it's more likely than not that the DVSA erroneously recorded a mileage on the car in July 2023.

Furthermore, Mr S hasn't said that he ever noticed any cosmetic or mechanical issues with the odometer indicating that it may have been tampered with, in the way he is now

concerned it may have been. It's also unclear to me why Mr S waited until March 2024 before obtaining the HPI check he's now produced and didn't attempt to obtain one prior to acquiring the car.

I've seen that Mr S has said that a mileage discrepancy wouldn't have shown in a HPI check. I'm not sure I agree with this as Mr S would presumably have supplied the mileage on the odometer, like he did in March 2024. And this would have been lower than the most recent recorded mileage from the National Mileage Register and Mr S would have been encouraged to check the mileage in the same way he was encouraged to in March 2024.

I'm also mindful that Mr S has not supplied an independent, or any other kind of, report stating any sort of opinion on whether the odometer on the car that he was supplied with had ever been tampered in the way that he now suspects either. In these circumstances and having considered everything in the round, I think it is unlikely that the true mileage on the car was 72,622 in July 2023. In my view, the mileage at this time is more likely than not to have been much closer to the 63,180 (which was presumably taken from the odometer) on Mr S' sales invoice.

In these circumstances while I've carefully thought about everything Mr S has said and provided, I've not been persuaded that it is more likely than not that the supplying dealer falsely represented the mileage of the car, either on the odometer or the sales paperwork, either during negotiations, or when delivering the car to Mr S. It follows that I've not been persuaded that it is more likely than not the supplying dealer made a false statement of fact and therefore I find that it did not make a misrepresentation to Mr S.

Overall and having considered everything, I'm not upholding Mr S' complaint. I appreciate that this is likely to be very disappointing for Mr S – particularly as he feels strongly about this matter. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 May 2025.

Jeshen Narayanan
Ombudsman