DRN-6020759

The complaint

Mr D is unhappy with the car supplied under the personal contract purchase with CA AUTO FINANCE UK LTD (CA).

When I refer to what Mr D and CA have said or have done, it should also be taken to include things said or done on their behalf.

What happened

In February 2024, Mr D entered into a personal contract purchase with CA to acquire a used car. The car was first registered in April 2022. At the time of supply, the reading on the car's odometer was approximately 4,279 miles. The total cash price of the car was £18,995. There was an advance payment of £397.51. There were 49 monthly payments. 48 payments of £400.22 and a final payment with the option fee and administration fee combined totalling about £9,589. The agreement also contained a fixed sum loan financing of £1,495 for a five-year guarantee that was included in the monthly payments.

In summary, Mr D said that the car he acquired had inconsistent mileage displayed on the odometer compared to its service history which showed a higher mileage than he was told during acquisition. Mr D said the car was misrepresented so he raised this with the supplying dealer. Mr D said the car was mis-sold to him, so he requested a full refund and to be released from the finance agreement. Mr D said the supplying dealer offered a refund of his initial deposit, but Mr D was unhappy that the dealer did not want to give him a return (in whole or part) of the payments he made under the finance agreement, so he said this would not restore him to the position he was in prior to being mis-sold the car.

Overall, he is unhappy that he was paying for a car which has endured far greater wear than what he expected and also, was a car worth far less due to the vastly increased mileage and the fact that its odometer has been replaced/altered. As a result, he said he was paying far more per month than if he had purchased the car at its true value.

In April 2025 CA wrote to Mr D. In this correspondence they said they endorse the dealer's offer and confirmed that the monthly payments would be retained as a fair usage payment.

Mr D remained unhappy with the above, so he referred his complaint to the Financial Ombudsman Service (Service).

Our investigator looked at Mr D's complaint and was of the opinion that the complaint should be upheld. The investigator, based on the information they received, was satisfied that Mr D would not have agreed to acquire the car at the price he did if he had he been made aware of the true mileage. The investigator concluded that Mr D would have paid less for the car if he had known its true mileage. Therefore, it was considered unfair for CA to keep the full monthly payments as a "fair usage" charge. Using the last recorded mileage of 72,626, the car's value was estimated at £13,090, which is 68.91% of the original price. Applying this percentage to the monthly payment of £400.22 gives £275.79 as a fair monthly amount. Based on this calculation and other factors like interest and usage, the investigator decided CA should only be allowed to keep 68.91% of the payments made and due.

Mr D agreed with the investigator.

CA did not respond. As such, the complaint has been passed to me to decide.

After reviewing the case, I issued a provisional decision on 27 November 2025. In the provisional decision I said:

''What I've provisionally 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 unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

I am very aware I have summarised this complaint very briefly, in less detail than has been provided, and largely in my own words. No discourtesy is intended by this. If there is something I have not mentioned, I have not ignored it. I have not commented on every individual detail. I have focused on those aspects that are central to me, reaching what I think is the right outcome. This reflects the informal nature of our service as a free alternative to the courts.

What I need to decide in this case is whether the car Mr D acquired was misrepresented to him by CA and/or their agents. To make a finding of misrepresentation, I must be satisfied that Mr D was given a false statement of fact that led him to enter into a contract he otherwise would not have entered.

Based on the available evidence I am satisfied that the mileage recorded in the advertisement, in the credit agreement, and told to Mr D is different compared to the service history of the car.

However, I do not think I need to go into great detail on whether the car was misrepresented because CA is not contending the issues surrounding the incorrect mileage. CA have said that they were sorry to hear of the issues surrounding the mileage on the car and the service history, so it seems, most likely, they are not disputing that the car was misrepresented to Mr D at the time of acquisition. Therefore, I am satisfied that, most likely, the mileage at the time of acquisition was not the actual mileage the car had travelled. As such, I think most likely a false statement of fact was made about the car's mileage prior to its supply.

Based on all the available evidence Mr D was, most likely, told a false statement of fact regarding the car's mileage. Having considered his testimony, I think most likely, these false statements led him to enter into a contract he otherwise would not have entered into at the price in question.

The remedy for misrepresentation is usually rescission of the contract to put the consumer back in the position they would have been in, had it not been for the false statement. I know Mr D feels that rescission of the finance agreement is the right outcome, and as such he feels that he should get all his payments back.

I am aware of the legislation and case law surrounding misrepresentation and rescission of contract, and I have taken it into consideration. However, I do not think it would be a fair and reasonable remedy for him to get all his payments back, considering the specific

circumstances of this case. I say this because, as time has passed, Mr D continued to use the car and put miles on it. I know that at the last MOT in July 2025, the car had travelled 16,494 miles (around 12,215 miles since supply). With that in mind, Mr D had the car for a significant period and had done some miles, so he gained a benefit from the car. As such, I think it is only fair and reasonable that he pays for the benefit he has gained.

I think a full refund would be disproportionate and unfair to the business. When thinking about putting Mr D back in the position he would have been in, had it not been for the false statement, had Mr D purchased a similar car, I believe most likely, he would have incurred similar payments during the period in question. As such, in this case, I think rescission of the contract whereby Mr D receives all his payments back is not the most fair and reasonable solution at the current stage. However, I will expand further on this later on.

I have also looked at a remedy for breach of contract, namely for goods which are not as described. The requirement for goods to be as described is implied into the contract between Mr D and CA by the Consumer Rights Act 2015 (CRA). Under the CRA where such a term is breached, Mr D is provided with several remedies including repair, replacement, or monetary awards such as damages. So, I considered what the right remedy is, taking all the circumstances of this case. I also take into consideration what both sides have said.

I have considered that a replacement is, most likely, not a practical remedy at this stage. I say this because I think most likely, it would not be easy to replace the car with a similar one as it might be difficult to find a like for like car, with a mileage similar to the one Mr D thought he was acquiring, and it would cause more delays and burden to Mr D. As such, a replacement seems unreasonable at this stage.

In addition, I think a monetary award combined with allowing Mr D to keep the car, would also not be the most fair and reasonable. I say this because Mr D's preference is to give the car back. If he were to receive damages (whereby he keeps the car), most likely, he would try to sell the car himself, which in turn would cause him further inconvenience.

Taking everything into consideration, I think the most fair and reasonable option at this point is for CA to end the finance agreement and to collect the car from wherever it is located at no cost to Mr D. Mr D has been able to use the car, so I think it is reasonable he pays for this use (as I explained above I do not think it would be fair or reasonable for him to get all his payments back). As such, CA can keep all payments due up to the time the car is collected except for a certain percentage of those payments.

There is no perfect way to calculate the usage Mr D had of the car. I have taken into consideration that had he known the car had significantly higher mileage, Mr D most likely, would have negotiated a lower price for it. As such, his monthly payments would have been lower. Therefore, considering the specific circumstances of this case, it would not be fair and reasonable for CA to retain full monthly payments which were higher than they would have been otherwise for the same car with comparable mileage to the true mileage of the car.

I can see that shortly before Mr D acquired the car, it had a recorded service when the car had travelled 72,626 miles. As such, using a valuation tool I can see that the car's valuation with that mileage would have been around £13,090. That is 68.91% of the actual cash price (£18,995) paid by Mr D. Hence, I believe that it is fair and reasonable in the circumstances of this case for CA to keep 68.91% of all the monthly payments due up to the time the car is collected.

Like I said, this is not an exact formula for working out what a fair and reasonable monthly payment would be to reflect Mr D's usage. I have taken into consideration that part of his £400.22 payments contained an amount for a five-year guarantee that he purchased with the

car, so I have considered that I do not know how a lower price of a car would have affected the monthly payments toward the cost of this five-year guarantee. I have also thought about the amount of interest charged on the credit agreement and the impact this has overall, but I think generally speaking, the percentage amount I have stated above reflects the usage of the car by Mr D fairly and reasonably.

In addition, CA should also refund Mr D's deposit.

Finally, CA should also add interest to the refunded amounts from the date of each payment made by Mr D until the date of settlement. Interest should be calculated at 8% simple per year.

My provisional decision

For the reasons given above, I intend to direct CA AUTO FINANCE UK LTD to:

1. *End the finance agreement and collect the car from wherever it is located at no cost to Mr D;*
2. *Refund Mr D's deposit;*
3. *Keep 68.91% of all the monthly payments due up to the time the car is collected;*
4. *Add 8% simple interest per year to the refunded amounts, from the date of payment to the date of settlement;*
5. *Remove any adverse information recorded on Mr D's credit file in relation to this credit agreement. The credit agreement should be marked as settled in full on his credit file, or something similar, and should not show as voluntary termination.*

If CA AUTO FINANCE UK LTD considers that tax should be deducted from the interest element of my award, they should provide Mr D with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.''

I asked both parties to provide me with any additional comments or information they would like me to consider by 11 December 2025.

Mr D accepted my provisional decision.

CA did not respond.

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 and considering neither Mr D nor CA had any further information or comments to make, I see no reason to reach a different conclusion to what I reached in my provisional decision (copied above).

My final decision

For the reasons given above, and in my provisional decision, I direct CA AUTO FINANCE UK LTD to:

1. End the finance agreement and collect the car from wherever it is located at no cost to Mr D;

2. Refund Mr D's deposit;
3. Keep 68.91% of all the monthly payments due up to the time the car is collected;
4. Add 8% simple interest per year to the refunded amounts, from the date of payment to the date of settlement;
5. Remove any adverse information recorded on Mr D's credit file in relation to this credit agreement. The credit agreement should be marked as settled in full on his credit file, or something similar, and should not show as voluntary termination.

If CA AUTO FINANCE UK LTD considers that tax should be deducted from the interest element of my award, they should provide Mr D with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 12 January 2026.

Mike Kozbial
Ombudsman