

The complaint

Mr B complains he was mis-sold a finance agreement by Decidebloom Limited trading as Stoneacre York ("Stoneacre").

This complaint has been brought to us by Mrs E acting on Mr B's behalf. To keep things simple, I'll refer to Mr B throughout this decision.

What happened

In February 2020 Mr B and his wife visited a local dealership to replace their car. Mr B says they didn't want to spend a lot of money, so they chose a car that was just over three years old with a cash price of £11,990. The dealer offered £4,325 in part exchange for their old car, leaving £7,665 to pay.

Mr B says he'd originally planned to pay for the car from savings, as he'd done with previous cars. He says he signed a hire purchase agreement because the sales staff led them to believe there was no charge for this. He agreed to put down a £500 cash deposit, with the remaining amount being repaid over 60 months.

Stoneacre say Mr B e-signed various documents, which they emailed to him. They say he hand-signed the finance agreement and would've been given a copy of it.

The documents Mr B had signed said he'd agreed to repay finance for the car and additional items, which I'll summarise:

- Cash price of car £11,990
- Five year guarantee £1,595
- Paint protection – lifetime guarantee £695
- Service plan – three services £607
- Cosmetic maintenance plan – three years £695
- Tyre and alloy maintenance plan – three years £695

The total amount repayable under the agreement was £21,605.80.

Mr B says he was approaching 76 years old at the time. He says he's never been very good at reading documents - and by that point he had hearing difficulties and needed glasses for reading. He says his wife was in her eighties, and unable to read small print as she was registered partially-sighted.

Mr B has told us that although he knows his email address, he's never been confident as to how to use his email account. He says he doesn't open it regularly to read messages and wouldn't know how to open any attachments.

Around two and a half years later, in September 2022, Mr B bought a different car. He paid for this from his savings. He received a part-exchange allowance of £8,000 for the car he'd got from Stoneacre. But he was shocked to discover he still owed £7,245.48 to settle the finance agreement.

Mr B says he was sure he'd only agreed to pay around £12,000 for the car and couldn't understand why other charges had been added. He says he'd paid for the car to be serviced by his local garage in November 2020 and November 2021, as he'd always done with his previous cars.

On 5 September 2022 Mr B complained to Stoneacre that the agreement had been mis-sold to him. He said he wouldn't have agreed to it if he'd known what he was signing up to. Stoneacre didn't accept they'd done anything wrong. But they said they recognised Mr B had been a good customer, having bought other cars from them. As a goodwill gesture they made various offers to reimburse some of the additional items purchased, ultimately offering him £2,750. Mr B didn't accept this, so the offer was withdrawn.

Stoneacre issued their final response, saying they hadn't upheld the complaint because they didn't think the finance agreement was mis-sold. They said their staff are trained to a high standard and explain all aspects of the arrangement the customer is entering into. Taking into account the various documents Mr B had signed, they were satisfied the sale of the finance agreement was fair and reasonable.

Dissatisfied with this response, Mr B brought his complaint to us. Our investigator thought Stoneacre had mis-sold the agreement. Although he accepted Mr B had signed documents showing the various costs and payments to be made, the investigator didn't think this meant Stoneacre had thoroughly explained how it would operate.

The investigator thought that, if Mr B had been made aware he'd be required to pay a total of £21,605.80 for a car priced £11,990, he'd have paid for it from his savings. So, he thought it would be fair for Stoneacre to refund the difference between the car's cash price and the total amount Mr B had paid under the agreement, which was £8,271.38. But the investigator noted Mr B got £754.52 back when the car was sold, so he thought this should be deducted from the amount to be refunded.

Stoneacre disagreed with the investigator's view. I'll summarise their comments:

- Their staff can't reasonably be expected to remember conversations with all customers. This complaint was raised two and a half years following the sale.
- Stoneacre provided a vehicle order form and compliance document clearly itemising the cost of each additional product. Mr B had e-signed to confirm his understanding.
- Mr B was given pre-contract credit information in good time with the option to take it away to digest. He was made aware he could withdraw from the agreement if he wished to do so.
- Information was supplied on all products and types of agreements so Mr B could consider which best suited his demands and needs. The finance agreement provided the key financial information and clearly warned him not to sign it unless he was prepared to be legally bound by its terms.
- The fact that Mr B had the car serviced elsewhere doesn't mean he wasn't made aware he'd bought a service plan. He had the car serviced by Stoneacre in August 2022.
- The fact that Mr B paid cash for previous cars, or that he had savings in place to buy this car outright, doesn't mean that was what he would have chosen to do on this occasion. Savings can be used for a variety of reasons. The finance agreement gave him the options of spreading the cost over a fixed term, withdrawing and settling using his savings, or paying off the loan early at any stage.
- Although Mr B raised a complaint about this agreement on 5 September 2022, the car wasn't sold until 19 January 2023 when a new keeper was recorded. This raises

a question as to why he hadn't used his savings to settle the agreement sooner to avoid further interest charges.

Stoneacre provided an email from the business manager who conducted the transaction. They asked for an ombudsman to review the case again.

After reviewing the evidence, I wrote to both parties setting out my initial thoughts. I said I agreed with our investigator that the complaint should be upheld, and that Stoneacre should refund Mr B the difference between the amount he'd paid under the agreement and the cash price of the car. I said I calculated this to be £8,271.38, to which interest should be added.

Mr B responded, stressing that Stoneacre had never serviced the car.

Stoneacre provided further information and comments, much of which repeated evidence we already held. I'll summarise the additional points they made:

- The mass of signed documents support that Stoneacre provided a high level of explanation. They showed us copies of two additional documents, headed "Vehicle Order Form" and "Dealer Declaration".
- The "Product Disclosure Document" forms part of the disclosure requirements set by the FCA under CONC rules. The customer doesn't pay anything for Stoneacre's services, but a range of products are available to purchase.
- FCA rules require customers to be fully informed of all aspects of the transaction. The number of documents is required to detail all terms of the agreement entered into.
- Mr B didn't lack recent experience in purchasing vehicles - he'd purchased his previous vehicle from them in November 2016.
- The finance agreement wouldn't have been sent by email. Mr B hand-signed this document and would've been given a copy of it. The finance company would also have posted him a copy, giving him a further chance to read the terms and withdraw from the agreement within 14 days if he wanted to do so.
- Mr B was taken through the order form and compliance document, he e-signed them, and they were emailed to him. Stoneacre provided screenshots showing they'd sent Mr B two emails on 6 February 2020, which he'd opened three days later.

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.

Mr B's complaint relates to a hire purchase agreement, for which Stoneacre acted as credit broker. I'm satisfied this is something I can look into for him. When considering whether this agreement was mis-sold I've had regard for relevant law, rules, and guidance.

Relevant law, rules, and guidance

The Financial Conduct Authority (FCA) sets out rules and guidance for businesses such as Stoneacre to follow, which can be found on the FCA website. This includes a general principle that businesses must pay due regard to the information needs of their customers and communicate information to them in a way that's fair, clear, and not misleading.

More detailed rules and guidance are set out in the Consumer Credit Sourcebook (CONC). The rule in paragraph 4.2.5 says certain things must be explained to the customer before an agreement such as this one is made. The explanation must be adequate to place the

customer in a position to assess whether the agreement is suitable for his needs and financial situation.

The explanation would need to include how much Mr B would have to pay each month, and how much he'd have to pay in total under the agreement. Explanations may be given verbally or in writing. But I think it's important to note that giving some of the required information verbally triggers a requirement for certain other information to be explained in the same way.

The guidance at paragraph 4.2.7 of CONC says that, when deciding on the level and extent of the explanation required, the lender or anyone acting on its behalf should consider factors including:

- the amount and duration of credit to be provided,
- the actual and potential costs of the credit, and
- to the extent that it's evident and discernible, the customer's level of understanding of the agreement, and of the information and explanation provided about it.

I've also considered the FCA's published guidance for firms on the fair treatment of vulnerable customers. Vulnerable customers are defined as those who, due to their personal circumstances, are especially susceptible to harm - particularly when a firm is not acting with appropriate levels of care. In relation to communication, I note that the guidance says:

4.6.2 Low capability or physical disabilities may result in specific communication needs. Several factors can drive low capability, including low literacy, numeracy, poor knowledge of financial products and cognitive disabilities. Physical conditions can also result in specific communication needs. For example, sight and hearing impairments can make some channels of communication impossible to use and makes alternative formats essential.

4.6.8 Where disclosures are standardised by rules, firms must ensure they comply with mandatory disclosure requirements. However, this should not prevent them from additionally providing information in a form that meets the communication needs of vulnerable consumers.

4.7.1 Some vulnerable consumers may be concerned that asking for clarification on seemingly basic terms or calculations, or for extra thinking time could be perceived negatively.

4.7.3 Firms should proactively check that consumers with characteristics of vulnerability that may impact their comprehension, understand information provided.

Mr B's needs, financial situation, and personal circumstances

Mr B told us he didn't want to spend a lot of money on this car. I note that the cash price was £11,990. Mr B was given £4,325 part-exchange allowance on his previous car and paid a cash deposit of £500, leaving £7,165 to pay. I've seen evidence showing he had more than enough savings to cover that amount.

The finance proposal form shows Mr B was approaching 76 years old at the time he entered into the agreement. It was due to last for five years, during which time the total amount

payable was £21,605.80. I consider this to be a large financial commitment, both in terms of the amount of credit and the length of time over which Mr B was to repay it. I think this was a relevant factor for Stoneacre to consider when deciding on the level of explanation required before the agreement was made.

Mr B says he doesn't wear glasses all the time but needs them to read. I've seen no evidence as to whether he put his glasses on during his visit to the dealership that day. He's told us he had hearing difficulties. He says he now has hearing aids in both ears but didn't have them at the time. I think it unlikely that Stoneacre's sales staff would have realised Mr B needed glasses to read. But I think it would've been evident that his hearing was impaired.

Mr B says his wife, who was 85 years old at the time, wouldn't have been able to see any of the documents shown to him that day as she was registered partially-sighted. I think it likely that it would've been evident she wouldn't be able to help Mr B clarify any inconsistencies or misunderstandings as to what had been said and what was written on the documents.

Stoneacre have told us that Mr B bought his previous car from them in November 2016. But I don't think he'd have been familiar with how a hire purchase agreement works, because he's told us he hasn't bought a car on finance for over 20 years. He says he's never been very good at reading documents, which hasn't been something he's ever had to do during his working life.

Mr B says he knows his email address and how to open messages, but that he wouldn't know how to open and scroll through any attached documents. I think if they'd asked him about this, Stoneacre's staff would've realised Mr B would have difficulty reading documents sent to him by email.

Was adequate explanation given to Mr B before he signed the agreement?

I appreciate it isn't possible for either party to recall exactly what was said before Mr B signed the agreement due to the length of time that's elapsed. Where I can't be certain what happened, I consider what's most likely.

Stoneacre feel they gave Mr B a high level of explanation of the agreement - and that the mass of documents Mr B signed support this.

They've told us that, when their business manager first meets a customer, he starts by talking them through a "Product Regulation Disclosure" document to explain their role as credit broker.

The business manager says he takes each customer through a first order form to confirm the deal, explains the process, then guides them through every stage of the paperwork, including the option of purchasing additional products. He says Mr B agreed to a higher payment than had been shown on the first order form, because he wanted the extra cover the additional products provided.

I haven't seen a copy of the first order form. I assume this confirmed the original deal for the car, without the additional products. I've reviewed copies of the following documents Stoneacre provided:

- A document headed "Product and Regulation Disclosure". I note this says: "*What will you have to pay for our services? You will pay nothing*". I think this may explain why Mr and Mrs B mistakenly believed it wouldn't cost them anything to pay for the car using the finance agreement.
- A three-page document explaining various types of credit agreement available.

- A document headed “Stoneacre Loan Decision”, requiring Mr B to tick and e-sign to confirm he’d been given an explanation of all the loan types. Mr B is recorded as having e-signed this document at 2.27pm.
- A document headed “Finance Proposal Form”. Mr B is recorded as having e-signed this document at 2.28pm.

So, I can see that by around 2.30pm Mr B had chosen a car he wanted to buy, and Stoneacre’s sales staff had completed a first order form. Their business manager had taken him through six pages of information about Stoneacre’s role as a credit broker, the different types of credit agreement available and the credit referencing process.

I consider some of this information to have been quite complex. And none of the documents I’ve seen up to that point contained any specific information about the agreement Mr B ultimately entered into.

Stoneacre say the additional products Mr B purchased were clearly itemised on a vehicle order form and compliance document. I’ve seen copies of:

- A four-page document headed “Vehicle Order Form”, containing financial information followed by terms and conditions.
- A “Compliance Document”.

Mr B is recorded as having electronically signed these documents at 3.50pm and 3.51pm respectively. Having reviewed the timeline of events, I think it most likely that Mr B had been with Stoneacre’s business manager for at least an hour and a half by the time he electronically signed the new order form and compliance form itemising the costs of the additional products.

When thinking about the length of time involved here, I particularly bear in mind what Mr B has told us about his hearing difficulty, his low confidence in reading documents, and his lack of recent experience with motor finance agreements. I think all of this information would’ve been a lot for him to take in, read on-screen, and understand. And I’m not satisfied that he was able to properly hear, read, and understand what he was electronically signing.

I’ve seen a copy of the hire purchase agreement Mr B signed. This contained key financial information he needed to weigh up when deciding whether to go ahead with the finance option, rather than buying the car outright. Given the large amount of credit involved, I think the information on that document needed to be explained very clearly to Mr B before he signed it. I think it was particularly important to ensure he’d understood the total amount he’d be required to pay.

And I’m not persuaded that it was adequately explained. Having agreed to part-exchange his previous car for this one, Mr B needed to decide how to fund the outstanding balance of £7,665. He’s told us he didn’t want to spend a lot of money on this car; had more than enough savings to buy it outright; and originally intended to do so.

I do accept that the idea of keeping his savings for other purposes may have been attractive to Mr B. But I consider it highly unlikely that he’d have chosen to go ahead with this agreement if he’d been made aware that he’d be committing himself to pay a further £4,287 for additional products and a charge of £5,328.80 for credit, bringing the total cost of the deal to £21,605.80.

Stoneacre say Mr B hand-signed the agreement, and that he would’ve been given a copy of it. They’ve pointed out that he had 14 days to withdraw if he chose to do so. I’ve considered this point.

I note that the itemised list of additional products could only be found in the vehicle order form and compliance document, which were provided to Mr B solely by email. I've seen a screenshot showing Stoneacre sent Mr B two emails with a total of 11 documents attached. It shows he opened one of these emails on 9 February 2020. But I've seen nothing to show whether he was able to open any of the attachments. He's told us he wouldn't know how to do that.

I've seen no supporting evidence to confirm whether Mr B was given a copy of the agreement after he signed it, or whether the finance company sent him a copy through the post. But in any event, I'm satisfied Stoneacre had an obligation to provide Mr B with adequate explanation before the agreement was made. And I'm not persuaded that happened here, because I don't think he understood the documents he signed. So I don't consider it relevant for me to consider whether he could have withdrawn from the agreement at a later stage.

I've seen evidence showing Mr B paid to have the car serviced by his local garage in 2020 and 2021. I don't think he'd have done that if the additional products and associated extra costs had been adequately explained to him - such as the fact that he'd be paying over £600 for a servicing plan.

Mr B told us he first became aware of the additional charges when he decided to replace the car. I've seen an invoice showing he part-exchanged it on 5 September 2022. I don't consider it relevant for me to consider whether Mr B asked Stoneacre to service the car around that time - or how long it took for the car to be registered to a new keeper.

Summary

Stoneacre say all the main aspects of the transaction were explained by way of their compliance documents. Their business manager has told us he sticks to the process with every customer to ensure they're always treated fairly.

I do appreciate financial businesses are required to provide certain standardised information. But I think the FCA rules and guidance make it clear that the level of pre-contractual explanation required will vary according to individual circumstances. And that mandatory disclosure requirements shouldn't prevent businesses providing information in a way that meets the needs of vulnerable customers.

I've seen a copy of the "Dealer Declaration" the business manager completed for this transaction. Amongst other things, this confirms:

"I believe the customer understood the explanations given; I believe the credit offered is suitable for this customer in my opinion, this customer is not a vulnerable customer".

I'm not persuaded that this was the case. I consider this to have been a large amount of credit. And I think there would have been evident and discernible signs that Mr B would struggle - and was in fact struggling - to properly hear, read, and understand a large volume of information about financial products he wasn't familiar with.

And I don't think it was reasonable to rely on Mr B being able to check through and clarify any misunderstandings by reviewing the documentation after he got home. Especially as most of the documents were provided to him solely by email.

For these reasons, I'm not persuaded that the explanation provided was adequate to put Mr B in the position of being able to assess whether this agreement, and the additional products and services detailed within it, were suitable for his needs and financial situation.

Putting things right

The finance agreement shows the total amount payable was £21,605.80. I've seen a copy of the settlement quote Mr B obtained dated 3 September 2022, showing the remaining balance to have been £8,589.90 at that time. So, I calculate Mr B to have paid £13,015.90 up to that point.

The quote shows Mr B would need to pay another £7,245.48 to settle the agreement. I've seen a copy of an invoice showing he part-exchanged the car on 5 September 2022, confirming this finance settlement. So in total, I calculate Mr B to have paid £20,261.38 under this agreement.

If the cost of the additional products and total amount payable under the finance agreement had been adequately explained to Mr B, I think he'd have chosen simply to pay the car's cash price, after deduction of the part-exchange allowance. And I think he'd have funded that from his savings, as he'd originally planned.

So, I think Stoneacre should refund Mr B the difference between the amount he paid under this agreement and the cash price of the car. I calculate this to be £8,271.38.

My final decision

For the reasons I've explained, I uphold this complaint and direct Decidebloom Limited to

- Refund Mr B £8,271.38, this being the total amount he's paid in excess of the car's cash price.
- Add interest to the refunded amount, calculated from the date of each overpayment until the date of settlement at 8% simple per year.

If Stoneacre consider tax should be deducted from the interest element of the award, they should tell Mr B how much they've taken off. They should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax if he's eligible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 July 2023.

Corinne Brown
Ombudsman