

The complaint

Mr N complains about a sum Zopa Bank Limited ("Zopa") is trying to seek the recovery of from him after it was agreed that he could reject a car he acquired under a hire purchase agreement ("agreement") with it.

What happened

On 9 September 2022 Mr N entered into an agreement with Zopa for the acquisition of a used car costing £3,145.00. The agreement listed the recorded mileage as 96,000 and the invoice listed it as 95,565.

Under the terms of the agreement, everything else being equal, Mr N undertook to make 48 monthly payments totalling £4,056.32.

On 21 September 2022 Mr N obtained a diagnostics report identifying a number of faults with the car. Mr N says following this diagnostic report he had repairs undertaken at a cost of £550.00, £400.00 of which was refunded to him by the supplying dealership on 30 September 2022.

On 1 October 2022 Mr N obtained a diagnostics report identifying a number of faults.

On 7 February 2023 Mr N complained to Zopa about the quality of the car.

On 13 February 2023 the car broke down (with a recorded mileage of 101,975) and a recovery agent called. Mr N was invoiced (and paid) £158.40 for this call out.

On 20 February 2023 the car was inspected by an agent appointed by Zopa who identified that the car wasn't of satisfactory quality. The recorded mileage at this time was 101,999.

On 3 March 2023 Mr N confirmed to Zopa that he wished to reject the car, as it outlined to him he could do.

On 28 March 2023 the car was collected from Mr N and returned to the supplying dealership with a recorded mileage of 102,480.

On 3 April 2023 Zopa issued Mr N with a final response letter ("FRL"). Under cover of this FRL Zopa said that following rejection of the car Mr N needed to pay it £862.96 for fair usage broken down as follows:

- | | |
|--|----------------|
| • 6,480 (102,480 less 96,000) miles travelled @ 25p a mile | £1,620.00 less |
| • payments made under the agreement (4 x £84.51) | £338.04 less |
| • payments made under the agreement (2 x £84.50) | £169.00 less |
| • payment for distress and inconvenience | £250.00 |

On 9 April 2023 Mr N paid Zopa a further £84.51 under the agreement.

On 24 April 2023 Zopa confirmed to our service that it was reducing the sum it was seeking from Mr N (for fair usage) to £754.21, a reduction of £108.75 (435 miles [96,000 less 95,565] at 25p a mile).

Mr N's complaint was considered by one of our investigators who came to the view that Zopa should write off the sum it was seeking the recovery of from Mr N and pay him £250.00 for distress and inconvenience.

Mr N agreed with the investigator's view, but Zopa didn't. And because of the latter Mr N's complaint was passed to me for review and decision.

I issued a provisional decision on this case in July 2023. In summary I said:

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

Zopa accepts that Mr N was supplied with a car that wasn't of satisfactory quality and it can be rejected, which Mr N has done. So, what I'm required to decide in this case is what, if anything, Zopa should have to do to fairly and reasonably compensate Mr N for him having been supplied with a car that wasn't of satisfactory quality.

Zopa says that to fairly and reasonably compensate Mr N, he should have to pay it £754.21. Mr N says to fairly and reasonably compensate him Zopa should treat his agreement as settled/cancelled with nothing further for him to have to pay. The investigator came to the view that Zopa should write off the sum it was seeking the recovery of from Mr N and pay him £250 for distress and inconvenience.

Zopa is correct that Mr N, despite being supplied with a car that was of unsatisfactory quality, should have to pay it for the fair usage he had of that car. So that is what I've gone on to consider.

Zopa initially calculated the fair usage to be £1,620.00 based on 6,480 miles travelled (102,480 less 96,000) at a cost of 25p a mile. It then calculated it to be £1,511.25, although by my calculation rather than reducing the fair usage sum by £108.75 it should have (using its methodology) increased it by £108.75 (to £1,728.75).

The calculation of what constitutes a fair usage sum for a consumer to have to pay isn't defined anywhere, so it's for me to decide what that sum should be based on what I think, in all the circumstances, is both fair and reasonable to the consumer and the business.

In the five month period September 2022 to January 2023 Mr N appears to have travelled approximately 6,500 miles in the car. And in the two month period between February 2023 to March 2023 he appears to have travelled approximately 500 miles in the car. So, with this in mind (amongst other things), I think it's only fair and reasonable that Mr N should have to pay Zopa the following sums for fair usage:

• September 2022	100% of his October 2022 payment	£84.51
• October 2022	100% of his November 2022 payment	£84.50
• November 2022	100% of his December 2022 payment	£84.51
• December 2022	100% of his January 2023 payment	£84.51
• January 2023	100% of his February 2023 payment	£84.50
• February 2023	25% of his March 2023 payment	£21.13
• March 2023	25% of his April 2023 payment	£21.13
• Total		£464.79*

** this sum isn't inconsistent with what Glass' guide says the car would have depreciated by over the same period*

So, what this means is that Zopa should refund Mr N any payments he has made against the agreement (and which haven't already been refunded to him) less £464.79, but no interest.

In some circumstances charging a consumer 25p a mile for fair usage might be fair and reasonable, for example where the cash price of the car is substantial, the car isn't very old, and the make and model could be described as 'high end' or 'luxurious'. But this isn't the case here. And charging 25p a mile had Mr N travelled 13,000 miles or 16,500 miles would have resulted in the following charges:

- 13,000 miles £3,250.00 (more than the cash price of the car)*
- 16,500 miles £4,125.00 (more than the total sum repayable under the agreement)*

And in my view this is neither fair nor reasonable.

It's also my view that being supplied with a car that was of unsatisfactory quality has caused Mr N both distress and inconvenience for which he should be fairly and reasonably compensated for. And taking everything into account, I'm satisfied that £250.00 constitutes an appropriate sum in this respect for Zopa to have to pay.

Finally, I think it's only fair and reasonable that Zopa remove any adverse information it has recorded with credit reference agencies.

Mr N responded to my provisional decision to say he accepted it.

Zopa responded my provisional decision to say:

"Thank you for your email, the content of your view has been noted.

As we have previously explained to your service, the terms and conditions of a fair usage deduction is outlined in the contract with Mr [N].

Please refer to the contract previously sent under section 9.6. For ease of reference, it confirms:

9.6 If you decide to exercise your right to reject the Vehicle; e.g., because it is not of satisfactory quality, and we agree to unwind the agreement, we will refund any money you have already paid, subject to any reductions we are allowed to make to take account of your use of the Vehicle. For example, to compensate us for any damage to the Vehicle and for each mile you have added on to the Vehicle. We will calculate deductions for mileage in accordance with industry guidance, taking account of the age and condition of the Vehicle and the effect of the mileage on the Vehicle's resale value.

In the customers case, we have applied the lower amount of 25p per mile completed and therefore do not agree with your recommendations, as we are happy with the deductions we have applied."

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 accept that Mr N should have to pay something for the use he had of the car and the Consumer Rights Act 2015 section 24(8) onwards allows for the same.

I also accept that the agreement Mr N entered into allows, at 9.6, for Zopa to make a deduction for usage. But 9.6 doesn't express this usage charge in pence per mile. And although it makes reference to industry guidance this industry guidance isn't quoted anywhere in the agreement, nor has Zopa provided our service with a copy of that guidance. Furthermore, I'm unaware of the industry guidance Zopa makes reference to, or whether 25p per mile constitutes a "*lower amount*".

Finally, I would add that 9.6 of the agreement suggests that the purpose of a usage charge is to compensate Zopa for the effect that added mileage to the car has had on its resale value. And as I said in my provisional decision my calculated usage charge of £464.79 isn't inconsistent (everything else being equal) with what Glass' guide says the effect the addition of approximately 6,500 miles to the car between September 2022 and March 2023 would have had on its resale value.

Given what I say above I can confirm that I remain of the view that Mr N should only have to pay £464.79 for fair usage and nothing more.

My final decision

My final decision is that Zopa Bank Limited must:

- refund any payments Mr N has made under the agreement (to the extent that they haven't already been refunded) less £464.79
- pay Mr N £250.00 for the distress and inconvenience he has been caused.
- remove any adverse information it has recorded with credit reference agencies

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 23 August 2023.

Peter Cook
Ombudsman