

The complaint

Mr O complains about the quality of a car he has been financing through an agreement with Zopa Bank Limited, who I'll call Zopa.

What happened

I issued my provisional decision on this complaint earlier this month. An extract from that provisional decision is set out below.

I know it will disappoint Zopa, but I agree with our investigator that Mr O should have been allowed to reject this car. I think there are some costs Mr O incurred as a consequence of being provided with a car of unsatisfactory quality. Our investigator didn't suggest they were all refunded, and I think some of them should be, so I'm issuing a provisional decision to explain that, and to give the parties an opportunity to provide any additional comments they may have.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr O acquired his car under a hire purchase agreement. This is a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then Zopa, who are also the supplier of the car, are responsible. The relevant law gives the consumer 30 days to reject a car if it's of unsatisfactory quality. Within that period the business do not have a right to repair the car unless the consumer consents.

Mr O took receipt of the car on 1 April 2023. Text messages exchanged on that day show that he was concerned the car was shaking during braking and that he thought that might be due to a warped brake disc. He told the dealer he wanted to reject the car, he said:

"...can I return this car tomorrow for a refund. The car shakes dramatically when you brake, chip on windscreen and head unit doesn't work properly".

I have found no evidence that a repair was ever agreed to by Mr O.

The car was MOT'd before Mr O took receipt of it and as the brakes are checked during an MOT it would, under normal circumstances, seem likely they were provided in a road worthy condition. But I don't think it's likely they were in this case as Mr O complained about the car shaking under braking only hours after he picked the car up; and a subsequent diagnostic confirmed his fears, that the brake disc was warped, and a CV joint was excessively worn.

I don't think that suggested this car was of satisfactory quality and I think Zopa should therefore, have allowed him to reject the car. They should do so now.

Zopa will need to collect the car at no cost to Mr O and they should end the finance agreement.

It's only fair that Mr O pays for the use he's had from the car but as that use has been impaired by the issues he's experienced I think Zopa should refund 5% of the instalments he's paid. They should add interest to that refund as Mr O has been deprived of the money.

Mr O has been inconvenienced by these issues. He's had to escalate his complaint to this Service when I think it could have been resolved earlier, and he's had to arrange a diagnostic to prove the issues he was experiencing. I've also read about his difficulties getting to an important funeral without reliable transport. In those circumstances, I think Zopa should pay him £200 compensation.

Mr O has detailed some costs he says he incurred as a consequence of being supplied with a car of unsatisfactory quality. Zopa should refund any unused portion of road tax or car insurance if Mr O can supply them with receipts. They'll also need to refund the £60 Mr O paid to diagnose the fault, his train fare to collect the car, and his petrol costs to get the car home. Mr O will need to provide the receipts to Zopa and Zopa should add interest to the refunds.

My provisional decision

For the reasons I've given above I'm expecting to uphold this complaint and to tell Zopa Bank Limited to:

- *Collect the car at no cost to Mr O.*
- *End the finance agreement.*
- *Refund 5% of any finance instalments that have been paid and add 8% simple interest* per year to any refund from the date of payment to the date of settlement.*
- *Pay Mr O £200 to compensate him for the distress and inconvenience he's experienced.*
- *Refund the £60 Mr O paid to have the faults diagnosed.*
- *Refund any unused portion of road tax or car insurance and the cost of Mr O's train fare to collect the car, and his petrol to return home. Add 8% simple interest* per year to any refund from the date of payment to the date of settlement.*
- *Remove any adverse reports they may have made to Mr O's credit file in relation to this issue.*

**If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.*

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.

Neither Mr O nor Zopa provided any further comments or evidence for me to consider.

Putting things right

My provisional decision therefore becomes my final decision on this complaint.

My final decision

For the reasons I've given above, I uphold this complaint and tell Zopa Bank Limited to:

- Collect the car at no cost to Mr O.
- End the finance agreement.
- Refund 5% of any finance instalments that have been paid and add 8% simple interest* per year to any refund from the date of payment to the date of settlement.
- Pay Mr O £200 to compensate him for the distress and inconvenience he's experienced.
- Refund the £60 Mr O paid to have the faults diagnosed.
- Refund any unused portion of road tax or car insurance and the cost of Mr O's train fare to collect the car, and his petrol to return home. Add 8% simple interest* per year to any refund from the date of payment to the date of settlement.
- Remove any adverse reports they may have made to Mr O's credit file in relation to this issue.

*If HM Revenue & Customs requires the business to take off tax from this interest they must give the consumer a certificate showing how much tax it's taken off if the consumer asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 28 November 2023.

Phillip McMahon
Ombudsman