

The complaint

Mr B has complained about the quality of a car provided on finance by Zopa Bank Limited.

What happened

Zopa supplied Mr B with a used car on a hire purchase agreement in October 2022. The cash price of the car was around £3,000 and it had covered around 88,400 miles since first registration in March 2013. The agreement required payments of around £125 for 30 months with no deposit or final payment. The total amount payable including interest was around £3,800.

Mr B said that he contacted the selling dealer within a couple of days as there was an issue with the rear seat belt and an air vent and they agreed to repair. In addition, he said there was a problem with the clutch and the dealer supplied a loan car while it was completing a repair.

Mr B said that some of the issues hadn't been resolved. He attempted to get repairs made under a warranty, however he was told that it was invalid due to the previous repair attempts. He tried to resolve this with the selling dealer but was frustrated by a lack of response.

In August 2023 Mr B complained to Zopa. Zopa issued a final response in October 2023 and asked him to provide evidence that the faults were present or developing at the point of sale. It also said it would consider the matter again once evidence was provided.

Mr B provided a report shortly after and Zopa started to investigate but it didn't issue a further final response. It indicated to Mr B that it might support rejection of the car.

An investigator here considered the complaint. She endorsed Zopa's offer to reject the car and unwind the agreement but didn't think that any payments should be refunded due to Mr B's use of the car. She also didn't award any compensation because she thought Zopa had limited information about the fault and had made the offer to assist Mr B. She agreed that Mr B should be reimbursed the cost of the report.

Mr B didn't agree. He said he was entitled to a refund of payments as he had kept the car and nursed it but eventually he had to stop driving it. He said he should get a refund of payments from the point that he first complained to Zopa.

As the parties didn't agree the case has been passed to me to make a decision. I wrote to both parties asking for further information.

Zopa said that it supported rejection and the collection of the car. It said it agreed that I could consider the whole complaint. It also said that it agreed the defect was present at the point of supply which is why it had agreed to rejection. But it didn't think that a refund of payments was fair as Mr B had still managed to drive over 21,000 miles while the car was in his possession. It said if it applied the industry standard mileage charge then he would have

paid around £5,300 to keep mobile, so it wanted to retain all the payments made to cover depreciation.

Mr B said that he stopped using the car in June 2024 but carried on to make all of the repayments under the agreement while the complaint was with our service. He supplied evidence that he had declared the car as off the road and stopped insuring it in July 2024. He confirmed that the final mileage of the car was around 112,000, which meant that he had driven over 23,500 miles since he acquired it. He confirmed he had made all the payments due under the agreement, but he still had a financial loss.

I issued a provisional decision which said:

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

I've read and considered the evidence submitted by both parties, but I'll focus my comments on what I think is relevant. If I don't comment on a specific point, it isn't because I haven't considered it, but because I don't think I need to comment in order to reach what I think is the right outcome. This is not intended as a discourtesy but reflects the informal nature of this service in resolving disputes.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. Zopa is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 (CRA) is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".

The CRA says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. In a case involving a car, the other relevant circumstances might include things like the age and mileage at the time of supply and the car's history.

The CRA says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

When Mr B acquired the car in October 2022 the mileage was around 88,400 and the cash price was around £3,000. The car was first registered in March 2013, so by this stage it was around nine years old. The mileage at supply was average considering its age, and it wouldn't be unreasonable to expect the car to be showing some signs of wear and tear, and that might include the underlying components.

The CRA sets out that goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day. Unless it's established the goods did conform to the contract on that day or that the application is incompatible with the nature of the goods or with how they fail to conform to the contract.

When something goes wrong with a car it isn't automatically something that the finance provider is responsible for. Sometimes the underlying components of a car suffer wear and tear which might mean that they come to the end of their serviceable lifespan during the course of a finance agreement.

Zopa isn't responsible for the service provided by the selling dealer after the car was sold. But it is responsible for supplying a car that was of satisfactory quality

As a starting point there would need to be some evidence of what the fault was. And secondly, that the fault renders the car of unsatisfactory quality.

Considering the description of the faults, and the age and mileage of the car, I think it was reasonable for Zopa to request further evidence that the car wasn't of satisfactory quality when Mr B contacted it. The report completed in October 2023 indicated that the car was in a condition expected due to the age and mileage. The expert said he couldn't definitively conclude the faults were present or developing at the point of sale. But he did accept that if there was evidence a repair had been made to the clutch earlier, as stated by Mr B, then that might be a failed repair. The report was written by an independent expert with details of their credentials and a statement to the court. So, I find it persuasive.

The difficulty here is that Zopa found it difficult to get the mechanical evidence that a repair had been made. I can see that it was constantly chasing the broker for information from the dealer. I think it eventually made a call on the balance of probabilities, based on very limited information.

Mr B didn't let Zopa know about the issue with the car until after the selling dealer had completed a repair. But had Mr B contacted it at the time I think Zopa likely would have sent him to the dealer, so there's probably no prejudice been caused, and it seems unfair to ignore what happened.

I asked Zopa whether it accepted the car was of satisfactory quality, and it confirmed that it agreed that the issues with the car were present when the car was supplied, which is why it supported rejection. So, I'm not going to go into great detail on that point.

But for completeness I will say that I agree the car wasn't of satisfactory quality. I say this because of the limited information which indicates that the car was seen by the supplying dealer shortly after supply and repairs were made. The expert asserted that if there were such evidence, then it could be concluded there was a failed repair.

Zopa agreed to take the car back and unwind the agreement, effectively allowing Mr B to exercise his final right to reject the goods. But due to the mileage that was covered by Mr B it didn't offer to refund any of the payments.

The report confirmed the mileage of the car as around 102,500 in October 2023. By the time Mr B handed the car back the mileage was around 111,500, which is evidenced by a photo he supplied of the odometer. This means Mr B has been able to travel over 23,500 miles since the car was supplied over around 21 months, which is broadly average. I've also noted the agreement doesn't include a mileage cap.

As a starting point, Mr B has been able to use the car up until July 2024. He said he stopped driving it in June, but I've seen a statutory off-road notification (SORN) and change of insurance from the end of July 2024. So, I think the evidence indicates that he hasn't used it after this point.

Mr B thinks he's entitled to a refund from the point that the issues started. I can understand that he feels passionately about this. But he has had reasonable use of the car. And if he didn't have the car, he would have had to pay something to keep himself mobile. I've not yet been persuaded that his use of the car has been impaired to such an extent given the mileage that was covered.

I can understand the spirit of why Zopa made the offer, but it wouldn't put Mr B into a fair position as he will have lost the asset that he finished paying for, and which might have some residual value that he could have benefitted from. If things hadn't gone wrong and the car was of satisfactory quality, then he might have still been able to use it and it might have had some value.

Sorting things out isn't an exact science here, I've thought carefully about a fair way to resolve this. I'm mindful the purpose of my decision is to provide a fair outcome quickly with minimal formality. On the one hand Mr B no longer has the car. But on the other Zopa have been paid everything required under the agreement. That doesn't seem fair.

The CRA says a deduction can be made from the refund to take account of the use the consumer has had of the goods in the period since they were delivered. It doesn't set out how to calculate fair usage and there's no exact formula for me to use. The terms of the agreement seem to broadly replicate the requirements of the CRA with regard to a deduction for use. There's not an industry standard mileage figure as suggested by Zopa. But as a starting point, in the particular circumstances of this case, I think the monthly repayment towards the hire purchase agreement is a reasonable figure to use for a month's worth of use of the car. So, I think Zopa can retain the monthly payments Mr B made in recognition of the use he's had of the car up to the end of July 2024.

I've also had consideration for the value of the car at the start and end of the agreement and the mileage covered. I've made some crude calculations based on the market value when the car was sold and when it was returned, and thought about what Mr B is going to get back. I'm intending to direct Zopa to refund all payments made after July 2024. I think that would be broadly in the same range as the value of the car if it had been of satisfactory quality, and Mr B had been able to retain it.

I've not seen enough to persuade me that Mr B's use of the car has impacted the value to the extent Zopa have claimed. Zopa might argue that it hasn't been able to achieve anywhere near the market value of the car when it was returned. But if that is the case, then I might find it is more likely due to the faults which made it not of satisfactory quality, rather than the mileage that Mr B has covered.

Mr B has been without use of the car since the end of July 2024, and he told us he had maintained his repayments. It would be hard to imagine it hasn't been inconvenient for him to be without the car that he is paying for. But I can see that Zopa were trying to get the evidence it needed to demonstrate a failed repair, but they were hampered by a lack of response from the dealer. It did, however, take longer than I would have expected to reach an agreement to take the car back, but I don't think Mr B was significantly inconvenienced by that until the end of July 2024. I'm also aware that there was some disagreement between the parties about returning the car. Given all the circumstances here, I think that compensation of £150, for being supplied a car that was not of satisfactory quality, seems broadly fair.

I've asked Mr B for evidence that he paid for the report, but I don't quite have enough to show how much that was, or that he has paid it. Zopa have already agreed to pay for this, so I don't think this is in dispute, but Mr B does need to evidence having paid for the report

before Zopa need to reimburse him. He might be able to show this by providing a receipt including the amount paid, an invoice or his bank statement.

Mr B replied to the provisional decision. He indicated that he thought there were discrepancies in the provisional decision. He gave further details about what happened after the selling dealer attempted a repair, which I've added to the background above. He clarified that he still had the car on his driveway as the collection didn't get agreed.

I subsequently wrote to both parties setting out that as rejection had been offered, I intended to make a direction that the car should be collected.

Zopa disagreed with the provisional decision. It said that it didn't think our service could comment on the way the deduction for use was calculated, and the decision appeared to contradict what it had been told. It supplied some online information about what it said was the industry standard for mileage charges, including a link to a blog, and a summary of average annual mileage for cars in the UK. It said that Mr B's mileage was excessive, and it had devalued the car.

Zopa also highlighted that it had supported rejection, but that Mr B had refused to accept it and had held onto the car unfairly. It wanted this clarified for the published decision and thought that it should affect the outcome.

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'd like to thank both parties for their responses to the provisional decision.

Both parties have mentioned that the provisional decision was inaccurate, and I'll address that first. I based my provisional decision on what was available at the time. It was an opportunity for both parties to clarify their version of events, and I thank them both for doing that, as some of the events weren't entirely clear from what was available on file when I sent my provisional decision. For example, I'd seen emails arranging the collection of the car but not a clear account from either side that it hadn't actually happened.

I can appreciate that Mr B wanted a more detailed account of what had happened in my decision. But I need to decide matters on what is most relevant. That doesn't mean I haven't taken into account everything that happened, and all the evidence that both parties have supplied. In the interest of summarising the events I've kept in focus the key events and issues that I need to have in mind when making my decision. Our powers allow me to do this.

Mr B has given further detail on what happened after the selling dealer attempted repairs. He described trying to get repairs done under the warranty, but he was told that the warranty was invalidated by the earlier repairs. He's also expanded on the timeline of events and explained who he contacted and when, to report the issues.

I've taken Mr B's comments into account, but it hasn't changed my decision. I'm aware of his interaction with the selling dealer and the warranty company. But Zopa weren't aware of the issues he was experiencing at that time, and it isn't responsible for the service provided by the selling dealer, or the warranty provider. I can only consider the complaint against Zopa which is why I've summarised the events. Mr B might have highlighted this by way of showing he didn't have as much use of the car, but given the age, price and mileage when

he took possession of the car and the mileage now covered, I still don't think his use has been impaired to the extent that further refunds are warranted.

I've explained that the car should be collected, as Mr B is being allowed to reject and getting a refund of payments after July 2024. This is the date from when he's evidenced he hasn't had use of the car.

Mr B has now provided evidence to demonstrate he paid £276 for the expert report, so I'm directing Zopa to refund this amount plus 8% simple annual interest from the date of payment to the date of settlement.

Zopa has referred to conversations that it may have had on other individual cases with this service. I can understand that, but I have to remind it that my role is to consider all the circumstances of the individual case and to decide what I think is fair and reasonable.

Considering the deduction for use seems to fall squarely within what we're required to do.

It's very difficult to say there is one set approach to follow when making this calculation. As I said in my provisional decision, there is no exact science.

But I would like to clear up a few things. There was no cap on mileage in the agreement. The terms of the agreement, as I said, are broadly similar to what is set out in the CRA. The agreement doesn't refer to a pence per mile amount. I'm still not aware of any industry standard for mileage when it comes to a deduction for use, and the CRA doesn't specify this either. The online information that Zopa refers to comes from a blog which appears to relate to mileage rates for reimbursement for business use, rather than anything to do with the circumstances here. So, although I've considered it, I don't think it is particularly relevant in this case.

Zopa has also quoted online information about annual mileage for cars as being around 7,400 per year. But there are varying opinions about this online, and no safe way to calculate it. I still don't consider that the mileage of 23,500 miles in 21 months is a reason to decrease the sum to refund, and again there was no mileage cap in the agreement.

I have however considered the individual circumstances here. The cash price of the car was quite low at £3,000 and the monthly payments were £125. I think that's a fair amount to pay for a month's use of that sort of car. I've also considered the market value at supply and when the car stopped working including the mileage.

But I have also had regard for the fact that Mr B will be left without the car if I endorse Zopa's offer. I don't think it is fair that he made all the payments under the agreement and is left with nothing. Whereas Zopa would have received all the payments under the agreement *and* also potentially receive some residual value from the disposal of the car.

Zopa have also highlighted that it had already made an offer to allow Mr B to reject the car. It said that the reason for the delays in collecting the car was due to his lack of support. It said that because of Mr B's delay, the resale ability and mileage had not been factored into the value reduction.

Zopa's offer to allow rejection seems to have been confirmed in September 2024, while the complaint was with our service. As the dispute was ongoing and he didn't want to accept the offer I don't think Mr B was unreasonable in not wanting to release the car. On the other hand, I can understand Zopa's point that it wanted to take the car back in order to release him from the agreement. Indeed, it said to our investigator at the time "Following the vehicle's sale at auction, as we have support rejection or unwinding the agreement, the remaining balance would be waived" [sic]. Perhaps if it had been able to collect the car in September 2024, it would have also ended the agreement and Mr B wouldn't have had to

make all the payments under the agreement. Thinking about what Zopa had already offered to do, it isn't too far off the remedy that I'm recommending.

But what I've set out now takes into account that I've seen evidence that Mr B stopped using the car by the end of July 2024. It also takes into account the valuation of the car even with the current mileage. It might not take into account the condition of the car as it has sat for some time. But I don't think there's an easy or fair way to adjust the refund for loss of use for that. Arguably any further loss in value might have come about, because the car wasn't of satisfactory quality when it was supplied.

Considering Zopa are responsible for the supply of the car, and it wasn't of satisfactory quality, it is only fair and reasonable that they do something to put things right.

Once the car is returned Zopa can still assess the car for damage beyond fair wear and tear excluding the issues reported which made it not of satisfactory quality. However, it should be mindful that the car has sat for some time as a result of this dispute and any charges it thinks are payable might be challenged by Mr B and lead to a further complaint. I'm not making any further direction on that in this decision.

On the basis I don't consider I've been provided with any further information to change my decision I still consider my findings to be fair and reasonable in the circumstances.

As a reminder Mr B doesn't have to accept my decision. He's free to pursue the complaint by other means, such as through the courts, if he wishes. But if he does accept my decision, he'll also be bound by it, which means that Zopa won't need to complete the settlement if he doesn't allow it to collect the car.

My final decision is the same for the reasons set out in my provisional decision, and above.

My final decision

My final decision is that I uphold this complaint and direct Zopa Bank Limited to do the following:

- Collect the car at no cost to Mr B
- Refund any payments Mr B made after July 2024 once the car has been collected
- Reimburse the £276 paid for the expert report
- Pay 8% simple annual interest* from date of each payment above until the date of settlement
- Pay £150 compensation for supplying a car that was not of satisfactory quality
- Remove any adverse information reported to the credit reference agencies if applicable

* If Zopa Bank Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much tax it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 June 2025.

Caroline Kirby

Ombudsman