

The complaint

Mr J complains about a car he acquired with credit provided by Zopa Bank Limited.

What happened

In July 2023 Mr J entered into a regulated hire purchase agreement with Zopa Bank to finance his purchase of a used car. The car was four years old, its mileage was 73,670 miles, its cash price was £18,990, and it had recently passed its MOT test with no advisories. Mr J made an advance payment (by way of part exchange) of £4,500, and so the total amount of credit provided was £14,490.

In November 2023 the car broke down, and had to be towed to a garage. Its mileage then was 82,911. The dealership that had sold Mr J the car told him that the car was no longer under warranty, so he asked the garage to repair it. It replaced two batteries, but this did not resolve the issue. The garage then diagnosed that the high voltage hybrid battery was no longer retaining charge, and that he would need to replace it at a cost of nearly £11,000.

This information prompted Mr J to complain to Zopa Bank that the car had not been of satisfactory quality at the point of sale. The bank arranged an independent inspection of the car, which found that the battery was defective and that this was the result of a previous repair attempt that had failed, and not due to wear and tear. As this repair attempt had been carried out by the garage and not by the dealership, Zopa Bank did not accept responsibility for it. It also said that there was no evidence that the issue had been present at the point of sale, and the fact that Mr J had driven the car over 9,200 miles suggested that the car must have been in satisfactory condition when he began driving it. It therefore declined his claim.

Mr J brought this complaint to our service, and one of our investigators upheld it. He concluded that the car had not been of satisfactory quality at the point of sale, because the car had broken down within four months of Mr J getting it, and also because the service history revealed that there had been an earlier problem with the battery in April 2023. He thought that the hybrid battery had not developed a fault suddenly, but had been deteriorating gradually, from July (or from April) to November. He also thought that it had been reasonable of Mr J to arrange for a third party to try to repair the car after the dealership had told him that it could not help him (he accepted Mr J's phone records as proof that this call had happened).

The investigator recommended that Zopa Bank pay for the cost of repairing the car – or if the repair fails or can't be completed, allow Mr J to reject the car. Since Mr J has been unable to drive the car since it broke down, the investigator also said that the bank should refund his monthly payments for that period. He said that Mr J should be refunded £120 for the cost of the garage diagnosing the problem. And he said there should be interest on the refunds, and that any negative information about the agreement should be removed from Mr J's credit file (I assume he meant in the event that the car is rejected).

Zopa Bank did not accept that decision. It pointed out that Mr J's phone records do not prove what was discussed on the call, and the dealership has no record of the call or of any agreement that Mr J could instruct a third party to repair the car. It maintained that the repair

had been unauthorised, and so the bank was not liable. It also said it had discovered that Mr J had been using the car as a taxi, which was a breach of the agreement. It asked for an ombudsman to review this case.

Mr J said that he had been transparent about his employment history throughout his dealings with the dealership. He provided an invoice for the sale of his previous car by way of part exchange, which he said confirmed that he had been using it for private hire. He said the dealership was lying about not authorising the repair attempt.

Because agreement couldn't be reached, the case was referred for an ombudsman's decision. (Meanwhile Mr J got another car.)

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.

A hybrid battery should typically last for between five and ten years. This battery failed at only four and a half years, and only four months after Mr J acquired the car.

Under section 19 of the Consumer Rights Act 2015, if a problem is discovered within six months of the point of sale, then it must be presumed that the problem was present all along, unless Zopa Bank can prove that it was not. That presumption applies here.

As I've said, the independent report states that the problem was not the result of wear and tear, but was due to a failed repair. Its conclusion that the problem was not present at the point of sale was based mostly on that finding. Its other reasons were the time and miles driven since then.

I accept that finding, but not the conclusion which was derived from it. The author of the report overlooks the fact that something caused the car to break down in the first place, prior to the repair attempt by the third party garage the car was subsequently towed to. The service history mentions that during the service in April 2023 (three months before Mr J acquired the car), an hour was spent on the battery. This may indicate that there was already a problem with the battery back then, or this may be what caused the problem. Either way, I'm satisfied that the problem was not caused by the November repair attempt.

I agree with my colleague that a battery losing the ability to retain charge is likely to be a problem which develops over time, rather than happening instantly. So I don't think the fact that Mr J drove the car for 9,200 miles means that there was nothing wrong with it in July 2023.

For these reasons, I am satisfied that the car was not of satisfactory quality when it was delivered to Mr J. So I uphold this complaint.

Turning to the point about Mr J using the car as a taxi, I do not think that Mr J's use of the car as a taxi has contributed to the fault, or made it worse, or that it has caused any other damage. (Aside from that, I am not going to make any further findings about that issue here. It is for Zopa bank to decide what action it wishes to take about that (if any), provided that it is consistent with the redress set out below.)

Under section 24, Zopa Bank is entitled to one attempt to repair the car (not including any attempt that was made before Mr J got the car) before it has to allow Mr J to reject it. Since there has not been a real attempt to repair the car, only an attempt to diagnose the fault, I don't think it matters whether the work that was done in the garage was authorised by the

dealership or not, so I don't need to decide that point. I will require the £120 which Mr J spent on that to be refunded, since it is an expense which he incurred because the dealership didn't inspect the car.

Mr J was satisfied with the investigator's recommendation to allow the car to be repaired at no cost to him, with rejection as an alternative if the repair doesn't work or is not carried out. That is in line with our service's usual approach in these cases, and so I will endorse that.

My final decision

My decision is that I uphold this complaint. I order Zopa Bank Limited to:

- Collect the car at a reasonable and mutually convenient time and repair the car at no cost to Mr J – but if the repair is unsuccessful or if it cannot be carried out, then (provided that Mr J co-operates and permits the bank to collect and attempt to repair the car) Zopa Bank must instead allow him to reject the car, cancel the agreement with nothing further to pay, and remove any negative information about the agreement from his credit file;
- Refund the £4,500 advance payment, and the monthly payments which Mr J has made since November 2023 (whether the car is repaired or rejected);
- Pay Mr J £120; and
- Pay interest on each of those payments at the rate of 8% a year from the dates the payments were made (in the case of the advance payment, that is from the date of the part exchange; in the case of the £120, that is 29 November 2023) to the date of settlement.

The above must be carried out even if Zopa Bank terminates the agreement under clause 5. Apart from that, I make no order about Mr J's liability if that happens.

If Zopa Bank considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it must tell Mr J how much it's taken off. It should also give Mr J a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if he is entitled to. Mr A should refer back to the bank if he is unsure of the approach it has taken, and both parties should contact HMRC if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 17 December 2024.

Richard Wood
Ombudsman