

Complaint

Miss A has complained about the quality of a car that Zopa Bank Limited (“Zopa”) supplied to her through a hire-purchase agreement.

Background

Miss A’s agreement

In August 2023, Zopa provided Miss A with finance for a used car. The cash price of the vehicle was £8,600.00. Miss A paid a deposit of £1,500.00 and applied for finance to cover the remaining £7,100.00 she needed to complete her purchase. Zopa accepted Miss A’s application and entered into a 36-month hire-purchase agreement with her.

The loan had an APR of 14.9%, interest, fees and total charges of £1,632.06 and the total amount to be repaid of £8,732.06 (not including Miss A’s deposit) was due to be repaid in 36 monthly instalments of £242.56.

Zopa says that Miss A’s agreement was signed on 11 August 2023, although the copy of the agreement that it has provided was signed by Miss A on 12 August 2023. In any event, what is clear is that Miss A didn’t collect and take possession of the vehicle until 21 August 2023.

Miss A’s difficulties with the vehicle

On 13 February 2024, Miss A contacted Zopa to explain that she had, what she described as, a major issue with the car. Having listened to the call, I note that Zopa’s customer service agent did not ask any details about the fault, said she couldn’t help with this and after speaking with a colleague advised that all she could do was set up a complaint. Miss A then contacted her breakdown provider on the same day.

The breakdown provider wasn’t able get the vehicle to start and found a number of fault codes present on the vehicle’s system. It recommended that the vehicle be transferred to one of its approved garages, as it suspected that the timing chain had jumped and this needed to be repaired. Miss A agreed to this and subsequently paid £282.49 for a repair to be completed.

However, despite a number of attempts at repairing the vehicle, which extended to fitting three different Electrical Control Units (“ECU”) and changing the positioning of the crankshaft sensor, the approved garage proved unable to start the vehicle, or identify what was causing the fault. It then liaised with Zopa for the vehicle to be inspected by an independent engineer.

The independent engineer’s assessment

The vehicle was inspected by the independent engineer on 18 April 2024. The engineer concurred that the vehicle didn’t start, wasn’t able to get it to start themselves and found a different error code than that that the approved garage previously reported (it found an error code relating to the electric fan). The engineer did not know why the vehicle wouldn’t start

and recommended that it be taken to a main dealer of the manufacturer, or a diagnostic specialist to determine and rectify the fault.

In the same report, in section A1 the engineer wrote, *“We can confirm that the faults presented at the time of our inspection would not have been present or in development at the point of sale”*. However, in section A3, the engineer then went on to write *“We can confirm that the faults present were developing at the point of sale”*.

Zopa’s response to Miss A’s complaint

Subsequent to the engineer’s report, Zopa issued its final response to Miss A’s complaint on 24 April 2024. Zopa didn’t uphold Miss A’s complaint.

In essence, it said that this was because the engineer confirmed that the faults were not present or developing at the time Miss A was sold the vehicle. So it wasn’t responsible for the faults with the car.

Miss A was dissatisfied at Zopa’s response and referred her complaint to our service.

The main dealer’s inspection of Miss A’s vehicle

Once Miss A had referred her complaint to our service, she arranged for the vehicle to be inspected by a main dealer of the manufacturer. The car was inspected on 7 May 2024. The engineer ran an initial diagnosis (at a cost of £120) and found that cylinder number one of the engine had no compression. The engineer suspected possible engine damage but thought that the cylinder head needed to be removed (at a cost of £2,047.50) before this could be inspected.

Miss A agreed to this and the cylinder was removed for inspection. Upon inspection the engineer found that gaskets and all of the valves within the cylinder needed to be replaced at a cost of £2,140.00. This meant that the total bill for repairing the vehicle would be £4,308.00.

Miss A decided to await the outcome of her complaint before committing to this repair.

Our investigator’s assessment

Miss A’s complaint was reviewed by one of our investigators. She thought that Zopa supplied Miss A with a vehicle that was not of satisfactory quality as it wasn’t durable. So she upheld Miss A’s complaint.

Zopa disagreed with our investigator’s view. It said that the independent report confirmed that the faults were not an issue at the time of sale and, in any event, Miss A raised the fault outside of six months, so it was not responsible for any issues with the vehicle. As Zopa disagreed with the investigator’s assessment, the complaint was passed to an ombudsman for a final decision.

In the period while the case was awaiting allocation to an ombudsman, the investigator went back to Zopa to confirm that Miss A actually reported the faults within six months of taking delivery of the vehicle. She explained that while Miss A may not have reported the fault with the vehicle until 13 February 2024 (which was six months and a day after she signed the agreement on 12 August 2023), she didn’t collect and take possession of the vehicle until 21 August 2023. And she invited Zopa to reconsider its position in light of this.

Zopa confirmed that while it appreciated the investigator's further comments, it wished to maintain its position and requested that an ombudsman consider the case.

So the complaint has been passed to me to decide.

My findings

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

What I need to decide in this case is whether the car supplied to Miss A was of satisfactory quality. If I don't think it was, I'll need to think what's fair, if anything, to put things right.

The finance agreement in this case is a regulated hire-purchase agreement, which we are able to consider complaints about. Under the hire-purchase agreement, Zopa purchased the vehicle from the dealership Miss A visited. Miss A then hired the vehicle from Zopa and paid a monthly amount to it in return. Zopa remained the legal owner of the vehicle under the agreement until Miss A's loan was repaid.

This arrangement resulted in Zopa being the supplier of Miss A's vehicle and so it is also responsible for answering a complaint about its quality.

The Consumer Rights Act 2015 ("CRA")

The CRA covers hire-purchase agreements – such as Miss A's agreement with Zopa. Under a hire-purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

The CRA says the aspects of the quality of the goods and whether they are satisfactory includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

The independent engineer's report

Zopa has argued that the report it commissioned from the independent engineer concludes that the fault on the vehicle was not present or developing at the point of sale. While it has not said this directly, I think that Zopa is relying on the answers the engineer provided to some of the 'Questions often asked', in order to support its conclusion.

I accept that subsection 1 of the Questions often asked section of the report does state:

"Q1 Please confirm any faults you consider to have been present since purchase and the selling agents' responsibility in your opinion?"

A1 We can confirm that the faults presented at the time of our inspection would not have been present or in development at the point of sale."

And section 7 states:

"Q7 Please give an opinion as to whether the selling agent is responsible for the cost of repair or if this is deterioration that should be expected on a used vehicle and as such a running cost the responsibility of the hirer?"

A7 We can confirm that the faults with the vehicle were not present or developing at the point of sale."

However, section 3 of the report does state:

“Q3 Please confirm any faults you consider to be wear and tear related or maintenance, which have developed since purchase?”

A3 We can confirm that the faults present were developing at the point of sale.”

While it is fair to say that there are a couple of subsections of the report which do state that the fault with the vehicle is unlikely to have been present or developing at the time of purchase, I think it's also fair to say that there is at least one subsection of the report which does state that the fault was developing at the point of sale. So, at best, the report is contradictory.

In any event, I don't think that I can reasonably place much weight upon the engineer's statements on whether or not the fault was present at the time of the sale. I appreciate that the engineer has provided an independent report and that a firm is generally entitled to rely on an expert report in support of its case.

However, in this case, I have to consider the engineer's comments in the context that they weren't in a position to confirm the reason for the fault with the vehicle. All they were able to do was confirm that the car didn't start and report on a fault code that they saw related to the electric fan.

The engineer's overall conclusion was that the vehicle needed to be taken to a main dealer of the manufacturer or a diagnostic specialist for the fault to be investigated and then rectified. It's also worth pointing out that the eventual diagnosis of the fault was that the gaskets and valves within one of the cylinders needed replacing, rather than a problem with the electric fan.

Given the engineer wasn't in a position to confirm why the vehicle wasn't able to start, it's difficult for me to see how they were in a position to confirm whether what was causing this was present or developing at the time of the sale. This is even more the case as that the only fault code that the engineer referred to related to an issue which the main dealer, which the engineer recommended that the vehicle be transferred to, did not agree was the reason for the fault.

Bearing in mind all of this, other than to corroborate the fact that the vehicle is indeed faulty, I'm satisfied that I cannot place much weight on the independent engineer's report. I'm not prepared to rely on it to the extent that Zopa has and reach the conclusion that the fault with the vehicle wasn't present or developing at the time of the sale.

As this is case, I'll now proceed to decide whether the fault which I'm satisfied is currently present on the vehicle, meant that the car wasn't of satisfactory quality at the point of supply.

The burden of proof

I don't plan to dwell on the burden of proof as it is not material to my determination of Miss A's complaint. However, given Zopa's response to our investigator's assessment, it would be remiss of me not to mention it at all.

Zopa has also referred to Miss A having reported the fault with the vehicle more than six months after the sale. While it has not said this directly, my suspicion is that Zopa has referred to this as it is suggesting that Miss A now has the burden of proving that the car wasn't of satisfactory quality.

I say this because under the CRA, where a fault occurs within the first six months of the point of supply, it is assumed that the car wasn't of satisfactory quality at the point of supply, unless it can be shown otherwise. If it cannot prove otherwise, the firm is allowed one opportunity to repair the fault and if the repair isn't successful, the consumer can reject the car.

I've already set out that Zopa is incorrect about when the fault was reported and that Miss A actually reported the fault within six months of the date she collected the vehicle and therefore the date it was supplied to her. Therefore, under the CRA it is assumed that the car wasn't of satisfactory quality at the time of the sale, unless Zopa can demonstrate that it was. I've also already explained why I'm not persuaded by what Zopa has provided in its defence that there wasn't a fault present or developing at the time of sale.

In any event, I don't think that when the fault was first reported makes too much of a difference here. I say this because whether the fault was reported within six months of the vehicle being supplied, six months and a day after it was supplied, or even if it were to have been reported later than this, having considered all of the available evidence, I'm not persuaded that Miss A was supplied with a vehicle of satisfactory quality.

I'll now explain why I think this is the case.

Why I don't think that Miss A was supplied with a vehicle of satisfactory quality

Miss A acquired a car that was used – it was approaching eight years old when it was sold and had completed 48,069 miles. I accept that there would be different expectations regarding its quality when compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage, price and any other relevant factors.

In this case, Miss A reported that the car wouldn't start in February 2024. This was around six months after it was supplied to her, during which she had only been able to cover around 3,700 miles. The available evidence suggests that the vehicle hasn't been able to start since February 2024. The breakdown provider believed that there might have been an issue with the timing chain.

The independent report indicates that the garage the breakdown provider transferred the vehicle thought that there might have been a problem with the ECU and the independent engineer thought that there might have been an issue with the electric fan, but recommended that the vehicle be inspected by the manufacturer.

The car was then sent to a manufacturer's garage to have further tests carried out. The manufacturer garage's engineer confirmed that the valves and gaskets within one of the cylinders need replacing. Its estimates indicate that it expects the cost of this repair will be around £4,300.00 – half the purchase price of the vehicle.

One of the considerations of whether goods are of satisfactory quality is durability. Here, the internal parts of one of the cylinders need replacing. So the engine needs substantial repair work being carried out, when the car is only just over eight years old and has only done around 50,000 miles. Having thought about this, I think a reasonable person would consider that the cylinders within an engine would last longer than this.

I appreciate that Miss A was able to drive the car for around 3,700 miles before it wouldn't start. But considering Miss A was paying £8,600.00 for a vehicle, I think that a reasonable person would expect her to have had far more use of the vehicle before such a substantial

repair would be needed. Indeed, it's my understanding that engines for the vehicle purchased typically run for around 100,000 miles – particularly if they are well maintained.

As the vehicle was serviced a month before the purchase and there is no record of any significant issues being flagged up during this and there isn't anything in any of the engineer reports or estimates suggesting that Miss A did not maintain the car as she was expected to, I don't think the cylinder which needs replacing was durable. It follows that I don't think the car was of satisfactory quality when Zopa supplied it to Miss A.

For the sake of clarity and avoidance of doubt, I wish to make it clear that my finding here is that the cylinder was not durable and therefore the vehicle was not of satisfactory quality. And this would have been the same, whether Miss A reported the fault within six months of the vehicle being supplied, whether she reported it six months and a day after it was supplied, or whether she would have reported it later than this.

What Zopa needs to do to put things right for Miss A

I've gone on to think about what Zopa needs to do to put things right as a result of supplying her with a vehicle that was not of satisfactory quality.

After Zopa said that all it could do was register a complaint, once Miss A initially reported the fault, Miss A contacted her breakdown provider for assistance. She has said she needed access to a car to get to work and so followed the breakdown provider's advice in getting the car transferred to an approved repairer, for the car to be fixed.

Miss A has provided evidence to show the cost of the repair carried out in February 2024 was £282.49. I think that this was a reasonable attempt to ensure that she could start using the vehicle again and a reasonable attempt to mitigate any loss – particularly as Zopa had only offered to set up a complaint. So to start with I'm satisfied that Zopa should pay Miss A the amount she paid for the repair with interest at 8% a year simple.

I can see that Miss A was invoiced £120 for a diagnostic test which was carried out by a manufacturer owned dealer. This was done at the direction of the independent engineer Zopa commissioned. I don't think that it was unreasonable for Miss A to have followed this recommendation and taken this course of action. It is unclear whether Miss A has already paid this invoice. But if she has, Zopa should pay Miss A the amount she paid for the diagnostic test with interest at 8% a year simple.

I now turn to the vehicle itself. As our investigator has explained, Miss A has told us that she would be prepared to accept a repair of the vehicle. And I've considered whether this would be an appropriate remedy here – particularly as the CRA sets out that a supplier can have one attempt at a repair and the initial repair wasn't carried out at its instigation. However, I'm mindful of the circumstances here and in particular that the manufacturer garage has supplied an estimate indicating that it would cost around £4,300.00 (should the initial diagnostic test be included) to repair the fault with the vehicle.

Considering that this is half the purchase cost, paid six months earlier and there have been number of conflicting diagnoses of the fault (although I accept that the manufacturer is best placed to make the most informed diagnosis) which mean I can't say it's more likely than not this repair would result in the issue being resolved, I'm not persuaded that there is a sound economic rationale for a repair to take place.

In these circumstances, I'm satisfied that the fair and reasonable resolution here would be for Miss A to reject the vehicle and for Zopa to collect it from her (or the manufacturer garage where I understand it currently is). As Miss A will have rejected the vehicle I'm satisfied that

Zopa should end its agreement with her and ensure that she has nothing further to pay on it. This will seek to place Miss A in the position she would be in had she not entered into the hire-purchase agreement in the first place, so I'm satisfied that Zopa should refund Miss A the £1,500.00 deposit she paid to the motor dealer with interest at 8% per year simple.

There appears to be no dispute that Miss A had use of the vehicle (without impairment) up until February 2024. So I'm satisfied that it would be fair and reasonable for Zopa to keep the payments Miss A made up until January 2024. There is also no dispute that Miss A hasn't had any use of the vehicle, at all, since she reported the fault to Zopa on 13 February 2024. I understand that she has continued making payments to her agreement since then, despite this and notwithstanding having not been provided with any replacement vehicle.

Our investigator suggested that Miss A's payments from March 2024 onwards should be returned to her, with interest, as a result of this. However, bearing in mind when in February 2024 Miss A no longer had use of the car from and when Miss A was making her payments, I think that Zopa should actually refund all of the payments that Miss A has made from her February 2024 payment, plus interest at 8% a year simple.

I've also considered the distress and inconvenience that Miss A experienced and the impact of her being without a vehicle since February 2024. Miss A has told this service she needed her vehicle for work – although I can't see that she's said she couldn't get to work because she didn't have the vehicle, or that she paid considerably more to get to work as a result. I'm also mindful that Miss A is being placed, as close as possible, to the position she would be if she didn't have the vehicle to begin with. And, in these circumstances, she would always have incurred some transport costs to get to work.

I also think that there were some delays in getting the fault with the vehicle diagnosed. As I've explained, Miss A took reasonable steps to mitigate her position and I'm also mindful that Zopa didn't offer much help – other than saying all it could do was register a complaint without even asking what the fault was – during Miss A's initial call.

Having considered all of this, I'm persuaded that Miss A was caused distress and inconvenience as a result of Zopa supplying her with a car that was not of satisfactory quality. And I think Zopa should pay Miss A £150 to reflect the distress and inconvenience this caused.

Fair compensation – what Zopa needs to do to put things right for Miss A

Overall and having considered everything, I think it is fair and reasonable for Zopa to put things right for Miss A by:

- collecting the car from Miss A (or the manufacturer garage should that now be where the vehicle is) at no cost to her;
- ending the hire-purchase agreement and ensuring that Miss A has nothing further to pay. Zopa should also remove any adverse information it may have recorded against Miss A as a result of this agreement from her credit file;
- refunding her deposit and all of the payments that she made to the agreement from February 2024 onwards;
- reimbursing her the £282.49 she paid for the initial repair to the vehicle. If Miss A paid the £120 for the manufacturer garage to carry out a diagnostic test and she can provide a receipt or invoice for this, this should also be reimbursed;

- adding interest at 8% per year simple on any refunded and reimbursed payments from the date they were made by Miss A to the date the complaint is settled†;
- paying her £150 in compensation for the distress and inconvenience that was caused.

† HM Revenue & Customs requires Zopa to take off tax from this interest. Zopa must give Miss A a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained, I'm upholding Miss A's complaint. Zopa Bank Limited should put things right for Miss A in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 26 July 2024.

Jeshen Narayanan
Ombudsman