

The complaint

Mr M is unhappy with a car supplied under a hire purchase agreement provided by Zopa Bank Limited.

What happened

In January 2023 Mr M acquired a used car financed by a hire purchase agreement provided by Zopa. The car cost £11,290 and was just under nine years old. The mileage was around 81,184.

The agreement was taken over 60 months, with Mr M due to make monthly repayments of £250.60. He paid a deposit of £700.

Unfortunately, Mr M says the car developed a fault. He said, in summary, that the car had stopped responding when at motorway speeds.

Mr M said he took it to a garage in June 2023, who noted a fault with the coolant pump. Mr M says he was told the engine management light ('EML') should've been on, but it wasn't.

He said the garage then showed him the EML had been covered up with a black silicone like substance. Mr M said the garage attempted a repair and uncovered the EML, but it came back on shortly after and the car still had issues at motorway speeds.

In July 2023 Mr M complained to Zopa. At the beginning of August 2023, an independent inspection of the car took place. The mileage was noted as 87,633.

This report noted, in summary, that there was a fault with the "*charge air coolant pump*". It noted that there was evidence of silicon over the EML. And it said it thought the fault was present or developing at the point Mr M got the car.

At the end of August 2023 Mr M told Zopa the car had broken down on the motorway. He said this was traumatic as a young family member was in the car and it took three hours to be recovered.

Mr M then got a quote for a repair which noted "*COOLANT PUMP*" and "*DPF REGEN*". The estimate was for £609. Mr M also said another quote recommended a battery replacement.

At the beginning of October 2023, the author of the independent report clarified that they thought the fault was an ongoing failed repair to the coolant pump.

Later in October 2023, Zopa issued its final response to the complaint. It said, in summary, that the coolant pump had a two year warranty and this could be replaced free of charge at a main dealer. Zopa suggested Mr M also replace the car's battery and have a DPF regeneration carried out. But it said it was not responsible for these issues as it said the battery was a wear and tear item and DPF issues are 'subject to driving style'.

Mr M referred the complaint to our service. An investigator issued an opinion and did not

uphold the complaint. She said, in summary, that as Mr M had been able to drive around 4,753 miles before the repair, she thought the issues were due to wear and tear rather than being present or developing at the point of supply.

Mr M was unhappy with this. He reiterated what he'd said about silicon being used to cover up the EML. And he said the car still had issues at motorway speeds.

Our investigator then reviewed the complaint and changed her opinion. She now said, in summary, that she thought the complaint should be upheld due to the commentary in the independent report and because she thought the car still had a fault with it. She said that Mr M should be able to reject the car and asked Zopa to pay £150 for the distress and inconvenience caused.

Mr M was unhappy with this and said that he should get his monthly payments and deposit back. He also said he hadn't been able to use the car on motorway journeys. Mr M provided a photo of the car's dashboard, showing an EML illuminated and the mileage showing as 92,472.

Zopa responded and said it was up to Mr M to show that the fault was present or developing at the point of supply. And it said the person who wrote the independent report was not aware of a previous repair to the coolant pump.

As both parties were unhappy with the suggested outcome, the complaint was passed to me to decide. I sent Mr M and Zopa a provisional decision on 25 July 2024. The contents of this decision were as follows:

Firstly, I'd like to explain to both parties that I may not comment on every point raised nor every piece of evidence. I'll instead focus on what I think are the key facts and what I consider to be the crux of Mr M's complaint. This reflects the informal nature of our service.

Mr M complains about a car supplied under a hire purchase agreement. Entering into regulated consumer credit contracts such as this as a lender is a regulated activity. So, I'm satisfied I can consider Mr M's complaint about Zopa.

When considering what's fair and reasonable, I take into account relevant law, guidance and regulations. The Consumer Rights Act 2015 ('CRA') is relevant to this complaint. This says, in summary, that under a contract to supply goods, the supplier – Zopa here – needed to make sure the goods were of 'satisfactory quality'. Satisfactory quality is what a reasonable person would expect, taking into account any relevant factors.

So, I'll consider here that Mr M's car was around nine years old and had covered about 87,500 miles. I don't think a reasonable person would expect the car to be in the same condition as a newer, less road worn one. I also think it's reasonable they may expect some parts of the car to have suffered from wear and tear.

But, the car cost over £11,000. So, I think a reasonable person would expect it to be free from anything other than minor faults and would expect trouble free motoring for some time.

What I need to consider here is whether Mr M's car was of satisfactory quality when it was supplied.

I've considered the invoice from the repair Mr M had carried out. This states:

"Trace fault to coolant pump for intercooler"

“replace coolant pump”.

So, I’m satisfied Mr M’s car had the fault he described in June 2023. It’s also worth noting at this point that I think Mr M acted reasonably here when he took the car to a garage to be repaired under warranty.

I’ve then considered the independent report from August 2023. This said:

“We do consider that there is a fault of which does exist within the vehicle with regards to the charge air coolant pump, there were two corresponding fault codes with regards to this and there was a counter of 255 occurrences where this fault has occurred”

The report also noted:

“There was evidence of silicon over the engine management light suggesting someone unknown had tampering (sic) with the system. There was no evidence the operator had caused the condition”.

Thinking about this, I’m satisfied the initial repair didn’t resolve the issue with the coolant pump and the fault remained present in August 2023.

I’m also satisfied that the car’s dashboard had been altered to cover up an EML. This is a potentially very serious issue, as it could mask the car displaying warnings.

It seems Zopa’s main argument to the investigator’s outcome was that it said there was no evidence the faults were present at the point of supply.

In relation to the EML being covered up, I think it’s unlikely Mr M did this himself. I find it’s more likely this issue was present when he got the car. And I think it’s quite possible this had been done to cover the EML being illuminated at this point in relation to the coolant pump.

In relation to the coolant pump itself, the report specifically states:

“It is our opinion that the fault displayed would have been present or developing at the point of sale”

“We would conclude that we do consider the faults with regards to ‘charge air coolant pump’ is a fault of which would have been present or in development at the point of vehicle sale”

“the fault will have been developing at sale although may not have been evidence at best the unit was compromised leading to the current defect”

Zopa pointed out that it believes the author of the report didn’t know about the previous repair when they drew their conclusions. But I’m satisfied this is incorrect. The report notes:

“We were made aware that the vehicle had been into a garage and they diagnosed the vehicle with the reported fault with regards to the coolant pump. This component was subsequently replaced”

I’m satisfied the report makes it very clear the author believes the fault was present or developing at the point of supply.

Thinking about all of this, I’m persuaded by the findings of the report here. I’m satisfied Mr M’s car had a fault present or developing when supplied with the coolant pump. I’m satisfied a repair attempt didn’t fix the issue. And I’m satisfied the car also likely had the EML masked over when Mr M got it.

I'm also satisfied a reasonable person would consider that these issues meant the car was of unsatisfactory quality when it was supplied.

I have considered that the later quote for repairs also mentions a DPF regeneration and it's noted another quote recommended a new battery. But there is no other information about this and it won't affect the conclusion reached. So, I make no findings on these issues.

What I now need to consider is what's reasonable to put things right.

I'm satisfied a repair has already taken place which didn't fix the issue. This means Mr M has a final right to reject the car under the CRA. It appears he has attempted to exercise this right, so it's fair and reasonable that he is now allowed to do so.

It's worth pointing out that while Zopa said Mr M should take the car to a manufacturer's garage to have the coolant pump repaired as it should be under warranty, I haven't seen that this is the case. And, either way, I'm still satisfied the repair wasn't successful even if this is correct, so Mr M would still have the right to reject the car under the CRA.

I understand Mr M wants to get back the repayments he made towards the car. But the CRA explains Zopa are entitled to retain an amount for the use of it. And it isn't in dispute that Mr M has continued to use the car. I also think on a fair and reasonable basis that it's right Mr M pays for the time where he's driven the car.

I have considered whether an award should be made here for impaired usage. Mr M says he hasn't been able to use the car on a motorway, but I haven't seen any evidence from either the garages nor the independent report that confirms this. And he has been able to cover over 11,000 miles in the car.

While I think it must have been frustrating for an EML to be lit up, in the absence of any further evidence, I haven't seen enough to persuade me the car wasn't performing as it should to the extent that Zopa needs to make an award here. It follows that I think it's reasonable Zopa retain all the monthly repayments Mr M made towards the agreement.

That being said, our investigator didn't mention the deposit Mr M paid in her views. I think it's fair this is refunded to Mr M.

I've considered that Mr M said he had to pay for diagnostics. But I haven't been provided with any evidence of these costs such as an invoice or receipts.

I also think Mr M has suffered distress and inconvenience because of what happened. He's explained that the car broke down with a young family member in, which I think must have been a stressful situation for Mr M to deal with. And he's had to take the car for repairs and diagnostics. Given the length of time this situation has been going on for and the impact to Mr M, I think a slightly higher amount to that recommended by our investigator of £250 should be paid.

I gave both parties two weeks to come back with any further comments or evidence.

Mr M replied and said he was happy with the decision, but noted he emailed Zopa and said he wouldn't use the car if payments could be stopped, but it didn't reply.

Zopa responded and said it didn't have anything further to add.

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've considered what Mr M said in response to my provisional decision. I appreciate it must have been frustrating if Zopa didn't reply to an email. But the key point is that whatever happened here, Mr M did continue to use the car. So this doesn't change my opinion.

I've thought about all of the other information on the case again. Having done so, I still think the complaint should be upheld for the reasons I explained in my provisional decision and set out above.

My final decision

My final decision is that I uphold this complaint and instruct Zopa Bank Limited to put things right by doing the following:

- Collect the car at no cost to Mr M
- Cancel the agreement with nothing further to pay
- Refund the deposit of £700*
- Pay Mr M £250 to reflect the distress and inconvenience caused
- Remove any adverse information from Mr L's credit file in relation to the agreement

* Zopa should pay 8% simple interest on these amounts from the time of payment to the time of reimbursement. If Zopa considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M 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 M to accept or reject my decision before 11 September 2024.

John Bower
Ombudsman