

The complaint

Mr H complains that the car he acquired through a hire purchase agreement with Zopa wasn't of satisfactory quality. He wants the car collected and repaired and to be refunded the money he has paid for diagnostics.

What happened

Mr H entered into a hire purchase agreement with Zopa on 18 April 2023 to acquire a used car and collected the car on 22 April 2023. At this time the car was eight years old and had been driven over 77,000 miles. The cost of the car was £18,500. Mr H says that when he collected the car, he was told that the parking sensor wasn't working, and the dealer offered him £100 off the purchase price which Mr H accepted. Mr H says he replaced the parking sensor, but this didn't resolve the issue.

In June 2023, Mr H said the engine management light came on and he booked the car into a local garage for an inspection. This happened on 11 July 2023 and multiple issues were identified. Mr H says the dealer has refused to fix all of the issues and refused to collect the car, instead it expected him to make a four-hour journey there and back. Mr H raised a complaint with Zopa, as the finance provider, as he didn't accept the car was of satisfactory quality at supply.

Zopa issued a final response letter not upholding Mr H's complaint. It noted the results of diagnostics Mr H had had carried out on the car and arranged an independent inspection to take place. This happened on 12 September 2023. This inspection found no diagnostic codes within the default traction control memory but while testing the engine management light came on indicating a fault with the adblue system. The inspector found no issues with the car's suspension but noted the right-hand door mirror parking camera wasn't working properly. Zopa said the inspector concluded that apart from the adblue fault the car appeared to be operating in a safe and satisfactory way. It said that the adblue defect can occur at any time and noting the mileage Mr H had covered it said there wasn't evidence that the fault was present at supply. It also didn't accept that there was evidence of the issue with the mirror being present at supply.

Mr H wasn't satisfied with Zopa's response and referred his complaint to this service.

Our investigator upheld this complaint. He said the evidence provided suggested there were faults with the car. He noted the diagnostic report Mr H provided said the driver's side mirror door camera needed to be repaired and the adblue tank needed to be replaced and the independent inspection report also noted faults with the adblue system and the door mirror camera. He noted that Mr H had driven the car 3,359 miles before the diagnostics were carried out. He discussed this with the person who carried out the diagnostics and they said they believed the faults would have been present at supply. He took into account the comments in the independent inspection that it wasn't possible to confirm whether the adblue tank and door camera faults were present at supply but said he placed more weight on the earlier diagnostics. Given this he thought it more likely than not that faults were present at supply. He said this raised a durability issue as although Mr H acquired a used car, he was only able to drive 3,359 miles before repairs estimated at over £3,000 were

identified.

Our investigator didn't think the car was of satisfactory quality at supply and thought Zopa should cover the cost of the repairs. He said it appeared that the relationship between Mr H and the dealer had broken down and given the distance between Mr H and the dealer he thought it reasonable that Zopa and Mr H work together to find a local repairing garage. He also thought Mr H should be refunded the £536 he paid for the diagnostics.

Our investigator noted that Mr H had been able to have reasonable use of the car despite the issues and so he didn't recommend any refund of the rentals.

Zopa didn't agree with our investigator's view. It noted that Mr H had been able to drive 3,359 miles before the first diagnostics took place and a further 4,908 miles before the independent inspection. It said the issues hadn't impeded Mr H's use of the car and it thought the issues would have been identified sooner had they been present at supply. Zopa noted our investigator had spoken with the garage that carried out the diagnostics but said the burden of proof was on it to evidence if the fault was present at supply and it didn't believe it had this.

My provisional conclusions

I issued a provisional decision on this complaint, the details of which are set out below.

Mr H entered into a hire purchase agreement with Zopa to acquire a used car. Under the regulations, Zopa can be held liable if the car wasn't of satisfactory quality when it was supplied. The Consumer Rights Act 2015 (CRA 2015) 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. When considering the acquisition of a car, factors such as the car's age, mileage and price are relevant. In this case the car was over eight years old at acquisition and had a mileage of 77,350.

Given the car's age and mileage, it isn't unreasonable to accept that it would have suffered some wear and tear. It is also possible that issues can arise shortly after acquisition with older cars, even if they weren't present at supply. In this case, Mr H has said that warning lights came on shortly after collecting the car for the chassis and adblue. He bought some adblue and contacted the dealer who suggested Mr H reset the car. At this time, he confirmed with the dealer that the driver's side suspension had been replaced. Had this resolved the issues then I wouldn't expect further action to have been taken. However, Mr H said the engine management light (EML) came on in June 2023 and so he booked the car into a local garage for investigation. This happened on 11 July 2023 and further issues were identified.

I have looked through the report from 11 July 2023 and it is clear that there are issues with the car. But for me to say that Zopa is required to take further actions I would need to be satisfied that the issues present were due to ongoing faults that were present at the point of supply and that the car wasn't of satisfactory quality at that time.

The July 2023 investigation recorded issues with the driver's side mirror camera; the need to replace the adblue tank before carrying out further checks on the adblue pressure lines and injector; replacement of the sensors and left hand airbag after which the right hand rear suspension airbag could be checked (this had previously been replaced). Given the issues were identified within six months of Mr H having the car, I find it reasonable that Zopa carried out an independent inspection of the car.

The independent inspection took place on 12 September 2023. During the inspection the EML came on and the inspector said it was believed there was a fault with the adblue system. It also reported the right-hand mirror parking camera was incorrectly fitted and not working correctly. A road test took place and the inspector's opinion was that the car's suspension was operating correctly and normally.

Based on the outcomes of both the July and September inspections, I accept that there are faults with the car. Both reports identified faults with the adblue system and driver's side mirror, so I accept these are faults with the car that are ongoing. The September inspection noted that the car had covered around 8,000 miles at that time and so it said it wasn't able to say the faults identified were present or developing at supply. However, I note that these faults were both present in July, less than two months after Mr H acquired the car. While he had driven the car over 3,000 miles before the July inspection I do not find this meant the issues weren't present at supply. I have considered Mr H's testimony that a warning light for adblue came on within the first few miles and that the July report noted the tank needed to be replaced and then further checks to take place. I have also considered that our investigator spoke to the garage that carried out the July inspection and it said it believed the faults were present from supply. Taking all the above into account, I find it more likely than not that the faults identified with the adblue tank and system and the mirror were present or developing at supply.

The July inspection also identified issues with the suspension. It recorded that both rear level sensor lever arms were seized and that the near side right suspension airbag was leaking. It noted that the offside rear airbag had been recently replaced and this was confirmed when Mr H discussed this with the dealer. However, when the September inspection took place, it didn't identify any issues with the car's suspension. While I do not dispute the findings of the July inspection, given the car had been driven over 3,000 miles by that time and that no issues were identified in the September inspection, I do not find that I have enough evidence to say that there is a fault with the suspension that was present at supply. Also, noting the age and total mileage of the car, I do not find I can say any issue with the suspension was due to a fault rather than wear and tear.

Taking all of the above into account, I find, on balance, it more likely than not that the issues with the adblue tank and system and the driver's mirror were due to faults present at supply and I accept, given the costs of repairs (specifically noting the estimate for a new adblue tank) that these mean the car wasn't of satisfactory quality. Given when the issues arose, I find it fair that Zopa is allowed to attempt to repair these faults. As there has been a breakdown in the relationship with the supplying dealer (and noting the distances involved) I find it reasonable that the repairs are carried out at a garage local to Mr H.

Mr H has been able to make use of his car despite the issues and so, noting the miles covered, I do not require Zopa to refund any of the rental instalments.

Zopa didn't agree with my provisional decision but confirmed it had nothing further to add.

Mr H wasn't satisfied with the outcome of my provisional decision. He said that all issues highlighted in the July 2023 diagnostic report should be addressed including the suspension. He said this issue had been present from the first mile and while the dealer said the airbag was replaced prior to supply it appeared to have not been fitted properly or not replaced. He said the issue with the suspension was intermittent and the independent inspection didn't have the right equipment to detect this. Regarding the parking sensors he said he felt misled by the dealer as he accepted the £100 deduction thinking this would be enough to resolve the issues but the actual cost was higher. He said he would rather return the £100 to the dealer and have the issue fixed properly. Mr H said the issue had caused him and his family

stress as he was concerned the car may not be safe to drive. He wanted the car to be fully inspected again and fully repaired.

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.

When considering a complaint, I take all relevant law, regulations, regulator's rules, guidance and standards into account. The CRA 2015 is of particular relevance to this complaint. My decision is based on what I consider fair and reasonable given the unique circumstances of the complaint.

As I set out in my provisional decision, when considering whether a car is of satisfactory quality it is reasonable to take into account the car's age, mileage and cost at supply. The car Mr H acquired was over eight years old and had a mileage of 77,350. Given the car's age and mileage, it is reasonable to expect that it will have suffered some wear and tear and that issues could arise shortly after supply even if they weren't present at supply.

Mr H raised concerns with the car shortly after acquisition and the car was inspected in July 2023 and then Zopa had an independent inspection carried out in September 2023. Both of these inspections identified issues with the car. While I note Zopa's comments about the mileage that had been covered before the inspections took place, considering when Mr H first raised the issues and the nature of these, I find it more likely than not that there were faults with the car that were present or developing at supply and for the reasons I have already set out in my provisional decision, these meant the car wasn't of satisfactory quality.

Both of the two inspection reports noted issues with the adblue system and the right-hand parking mirror. Given this, and noting Mr H's comments about these issues and when they arose, and the comments made by the garage that carried out the July inspection, I find it reasonable to accept that these faults were present or developing at supply. Because of this I find that Zopa is liable for the cost of these repairs.

The July 2023, inspection report also noted issues relating to the car's suspension. This was flagged to the inspector before the September 2023 inspection. Mr H has provided a screenshot of the warning he received about the chassis function. This says that it is possible to continue the journey but to have the problem checked. I do not find this is enough to confirm that there was a fault present and I note that the September 2023 inspection reported no stored fault codes. I have therefore considered the further evidence provided in regard to the suspension. While I accept issues were identified in July 2023, the car had been driven over 3,000 miles by this time. In September, after the car had been driven over 8,000 miles the inspection reported the suspension to be operating normally. While I note Mr H's comment about the September 2023 inspection, this was carried out by an independent inspector and I find it reasonable to place weight on this. Having considered the mileage that had been driven by Mr H by this point and that the inspector noted no issues with the suspension at that time, I do not find I can say this was an ongoing issue that was present from supply. Also, noting the age and mileage of the car, and that issue with suspension can be due to wear and tear, I do not find I have enough to say that this is an issue I can hold Zopa liable for.

I understand why Mr H is upset that he wasn't able to resolve the issue with the parking sensor for £100 but as he accepted this offer as part of the supply process, I do not find that I need to consider this further.

Overall, I find it more likely than not that there were issues with the car which meant it wasn't of satisfactory quality at the point of supply. But taking into account the car's age and mileage and the mileage Mr H was able to drive before the inspections took place, and the outcome of these, I find that Zopa is only liable for the repairs relating to the adblue system and the driver's mirror, as well as refunding the cost of the July 2023 inspection.

As I noted in my provisional decision, Mr H has had reasonable use of the car and so I do not require Zopa to refund of the rentals paid.

Putting things right

Zopa Bank Limited should work with Mr H to find a local repairer to arrange the repairs to the cars adblue system (including the replacement tank) and the driver's mirror at no further cost to Mr H and within a reasonable timeframe.

Zopa Bank Limited should also refund Mr H £536 for the diagnostic report he paid along with 8% simple interest* from the date of payment to the date of settlement.

*HM Revenue & Customs requires Zopa Bank Limited to deduct tax from any award of interest. It must give Mr H a certificate showing how much tax has been taken off if he asks for one.

My final decision

My final decision is that I uphold this complaint. Zopa Bank Limited should carry out the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 30 September 2024.

Jane Archer
Ombudsman