

The complaint

Miss P complains about the quality of a car she has been financing through an agreement with Zopa Bank Limited ('Zopa').

What happened

Miss P took receipt of a used car in January 2023. She financed the deal through a hire purchase agreement with Zopa. At the point of supply the car was about eight and a half years old and had already completed about 87,500 miles.

Within six months Miss P had problems with the car and she complained to Zopa who partially upheld her complaint. They agreed to reimburse some expenses that Miss P had incurred as a result of the faults she had experienced, and they paid £118.84 in compensation in respect of the distress and inconvenience caused.

Miss P wasn't satisfied with Zopa's response, and she referred her complaint to this service. Our investigator thought Zopa's offer had been fair in the circumstances but as Miss P disagreed her complaint has been referred to me, an ombudsman, to make a final decision.

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 know it will disappoint Miss P, but I agree with our investigator's view. I'll explain why.

I'm required by DISP 3.6.4R of the Financial Conduct Authority's (FCA's) Handbook to take into account the relevant, laws and regulations; regulators rules, guidance, and standards; codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time.

The Financial Ombudsman Service is designed to be a quick and informal alternative to the courts under the Financial Services and Markets Act 2000 (FSMA). Given that, my role as an ombudsman is not to address every single point that has been made. Instead, it is to decide what is fair and reasonable given the circumstances of this complaint. And for that reason, I am only going to refer to what I think are the most salient points. I can see that Miss P has referred me to several different pieces of legislation and I have read all of the submissions from both sides in full and I keep in mind all of the points that have been made when I set out my decision.

Miss P acquired her car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is particularly relevant here. It says that the car should have been of satisfactory quality when supplied. If it wasn't then Zopa, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is 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 like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Miss P. The car here was eight and a half years old and had already completed an appreciable mileage. An old car with a high mileage will not be expected to be as good as a newer car with a low mileage, but it should still be fit for use on the road, in a condition that reflects its age and price.

The relevant legislation allows the business an opportunity to repair faults that are present when the car was supplied. I think it's fair to allow Zopa that opportunity, but I don't think they need to allow Miss P to reject the car.

I think Zopa's offer has been a fair one. For the following reasons.

Issues I don't think required action

Miss P complained that a key was broken but the dealership provided a new one in quick time.

The windscreen wipers appear to have deteriorated since the car was supplied. I say that because the car passed an MOT at that point and the windscreen wipers would have formed part of that check.

The noise from the incorrectly fitted tyre was misdiagnosed by a third-party garage. It was Miss P's decision to ask that garage to consider the fault so I don't think it would be fair to hold Zopa accountable for that mistake. This was a rotational winter tyre and it had been fitted in the wrong direction but, it was still operational, and I don't think there's evidence it was faulty when supplied.

The Consumer Rights Act (2015) at Section 9(4) explains that goods should not be considered of unsatisfactory quality if a fault is apparent upon reasonable inspection, and the consumer ought to have noticed that before they entered into the agreement. Miss P inspected the car a couple of times before she entered into the agreement, and the independent inspector thought it was reasonable to suggest she should have noticed damage to the bumper, front panel and headlamp during her inspections as *'there were a number of defects that should have been evident to the 'average person'.* I think Zopa were reasonable to rely on that legislation and that independent opinion and not to support Miss P's claim in respect of that damage.

The car was advertised with a partial service history and that is what Miss P received. I don't think there's sufficient evidence to support the view that the agreement was misrepresented to her on that basis.

There appears to be a clerical error with the mileage as the MOT says the car had covered 87,455 and the advert placed before the MOT was completed suggests the car had completed over 88,000 miles. I think there is little impact on Miss P of the mileage being advertised a little higher than it was, she has, it seems, suffered no detriment. The finance agreement explained that the mileage on inception of the deal was 87,428 and that seems in line with the MOT record.

While an advisory on the January 2024 MOT notes an oil leak and there's evidence that the car was previously advertised with an oil pressure problem. The MOT completed before the car was handed over didn't identify any oil leak and I think it would have been likely to if the problem was pre-existing. I don't think that suggests the car was supplied in an

unsatisfactory condition or that Zopa need to take any action in respect of that issue.

It was Miss P's decision to take her case to court and incur the costs that she did. This service can only consider complaints about financially regulated matters and it's not for me to order repayment of court costs.

Misrepresentation is, in very broad terms, a statement of law or of fact, made by one party to a contract to the other, which is untrue, and which materially influenced the other party to enter into the contract. I can't see that there has been a false statement of law or fact here that would have led Miss P to enter into a contract she wouldn't have otherwise entered into.

Zopa considered the distress and inconvenience caused and made a payment in respect of that, that I think was reasonable. We wouldn't expect them to consider loss of earnings, but I do think they have fairly considered the distress and inconvenience caused to Miss P.

Issues that required action

The independent engineer suggested the air conditioning hadn't been properly maintained and Zopa have offered to refund the contribution Miss P made to the warranty repair (£411.00), the cost of the UV test (£59), the cost of reconnecting the system (£96) and the cost of obtaining the independent report (£177.50). They added interest to that refund.

I think there was evidence that the car was supplied in an unsatisfactory condition because the air conditioning was disconnected and didn't work. In those circumstances I think Zopa were fair to refund the costs Miss P had incurred. But I don't think it would be fair to expect Zopa to refund Miss P's travel expenses when she chose not to drive the car without air conditioning. I don't think it would be fair to suggest it hindered Miss P's ability to drive the car.

Ultimately, I think the redress Zopa offered was fair in the circumstances and I'm not asking them to take any additional action.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 19 December 2024.

Phillip McMahon
Ombudsman