

The complaint

Mr A is unhappy that a car supplied to him under a hire purchase agreement with Zopa Bank Limited was of an unsatisfactory quality.

What happened

In November 2022, Mr A was supplied with a used car through a hire purchase agreement with Zopa. At the time, the car was around ten years old and had travelled 70,000 miles.

Mr A says the car broke down on 19 December 2022, and he took the car back to the supplying dealership on 22 December 2022. The dealership replaced the engine, but Mr A wasn't happy with this, so he refused to allow the dealership to return the car to him and stopped making payments towards the agreement. He also complained to Zopa, asking to cancel the agreement.

Zopa accepted the car was faulty when it was supplied to Mr A. But they said the car had been repaired by the dealership. So, they didn't agree that Mr A could reject the car. Mr A wasn't happy with this and brought his complaint to us for investigation.

Our investigator said he'd seen a report from an independent engineer which confirmed there was a fault with the car. But the engineer went on to say that the fault had been satisfactorily repaired and was no longer present. The investigator also said that Mr A had initially agreed to a repair, and it wasn't until the repair had been completed that he asked to reject the car.

However, the investigator said that Zopa had the right of repair and, as the repair was successful, he didn't think that Mr A should be allowed to return the car. But, he did say that Mr A was without the car for around a month, so he thought that Zopa should refund one monthly payment or adjust Mr A's credit file to remove one month's arrears, and pay Mr A an additional £100 for the distress and inconvenience he'd been caused.

Mr A didn't agree with the investigator. And he provided copies of messages he'd sent to the dealership which he says shows he asked to reject the car. However, the investigator said that these don't show Mr A asked to reject the car within 30 days of it being supplied to him. Mr A said this delay was due to the Christmas holidays, and he's asked for 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr A was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The CRA says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Zopa are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Zopa can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr A to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr A took possession of it, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Zopa to put this right.

It's not disputed that there was a fault with the car when it was supplied to Mr A, nor that the dealership replaced the engine. I've seen a copy of the independent engineer's report for an inspection that took place on 20 March 2023. The engineer said "*we would consider the fault with the engine to be present at purchase.*" However, the engineer also confirmed that "*we would consider the repairs and the engine to be a commercially acceptable standard [and] the vehicle needs no repairs at present*"

I've seen the engineer has confirmed their duty is to the courts, and not to the person who instructed and/or paid for the report. As such, I'm satisfied it's reasonable to rely on this report.

Where goods were of an unsatisfactory quality at the point of supply, the CRA allows a 30-day short term right to reject. And, when this isn't exercised, then the supplier of the goods has a single chance at repair. To exercise a short term right to reject, the consumer would have to specifically ask to reject the goods – it's not sufficient just to identify and complain about any faults.

Mr A has confirmed that he took delivery of the car on 26 November 2022. As such, his short-term right to reject the car expired on 26 December 2022. While I appreciate this fell over the Christmas period, the CRA doesn't make any allowances for bank holidays or other non-working days i.e. weekends or when the dealership was shut for other reasons. As such, the period of the short-term right to reject remains unaltered.

I've seen the correspondence between Mr A and the dealership. And, while he had advised the dealership there was a fault with the car in mid-December 2022, most of the correspondence dates from early January 2023. In the messages Mr A sent the dealership in January 2023, he expressed his dissatisfaction and, although he didn't specifically ask to reject the car, it's clear the messages imply that he wanted to reject. Additionally, the correspondence between Mr A and Zopa in January 2023 also shows that he wanted to reject the car.

However, while I'm satisfied that Mr A asked to reject the car, these requests were made after his short term right to reject had expired. As such, Zopa weren't required to accept rejection and had the right to insist on the opportunity to repair the car.

As confirmed by the independent engineer, the car was repaired (by replacing the engine) and this repair was successful with no evidence that the original faults remained. Given this, and under the terms of the CRA, Mr A doesn't have the right to reject the car, even though he's unhappy that a second hand, and not a brand new, engine was put in the car.

So, it's for this reason I won't be asking Zopa to take back the car and unwind the agreement. However, this doesn't mean that I won't be asking Zopa to do something.

Putting things right

Mr A was without access to his car for January 2023, while it was being repaired, and I understand that he wasn't provided with a courtesy car. As such, Zopa should either:

- refund the January payment to Mr A (if it was paid), or
- correct Mr A's credit file to remove the missed payment for January 2023 if it wasn't, and
- apply 8% simple yearly interest on any refund, calculated from the date Mr A made the payment to the date of the refund †.

In addition to this, Zopa should also pay Mr A £100 compensation for the distress and inconvenience he was caused by being supplied with a car of an unsatisfactory quality.

†HM Revenue & Customs requires Zopa to take off tax from this interest. Zopa must give Mr A a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr A's complaint and Zopa Bank Limited should follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 9 June 2023.

Andrew Burford
Ombudsman