

The complaint

Mr L complains that the car he acquired through Zopa Bank Limited (“ZBL”) wasn’t of satisfactory quality. He wants ZBL to cancel his agreement and collect the car and compensate him for the troubles he’s experienced.

What happened

Mr L entered a hire purchase agreement in July 2022 to acquire a used car. At the time of acquisition, the car was around eight years old and had been driven more than 65,000 miles. Mr L says the alternator belt failed seven months later because of a major oil leak and this fault, along with some other problems means that the car wasn’t of satisfactory quality when it was supplied by ZBL. Mr L told us:

- the alternator belt snapped and perished because of a major oil leak, and the car can no longer be driven;
- he’d already had some repairs undertaken against a warranty he’d bought independently of the credit agreement;
- he believes the oil leak was present at the time he purchased the car as the engine had no oil in it, and although he added oil to the required level, the engine was using an unusually high level of oil when the car was being driven;
- the dashboard is indicating a number of faults – a number of indicators are lit;
- he’s been sold a vehicle that was unfit for purpose, and he wants ZBL to collect the car, end his credit agreement, refund him his deposit and the money he’s lost since he acquired the car, and compensate him for the distress and inconvenience its caused.

ZBL rejected this complaint. It said it hadn’t seen any evidence to show that there were problems with the alternator belt or that there had been an oil leak present or developing at the point of supply. And it noted Mr L had used the car for more than 7 months and had been able to drive more than 10,000 miles before a fault occurred, so it concluded that the issues reported by Mr L could not have been present or developing at the point of sale.

ZBL did say that Mr L should consider commissioning an expert third-party to conduct an independent assessment into these matters and report back. And it provided Mr L with contact details for several such third parties.

Mr L brought his complaint to this Service, and he also complained about a default notice served by ZBL and about the way it was treating him in respect of the outstanding arrears on the account.

Our investigator looked at this complaint and said he didn’t think it should be upheld. He firstly explained that Mr L’s concern about the default was a *new* complaint and that he’d need to raise it with ZBL in the first instance before this Service could consider it. And he also explained that he wasn’t considering repairs that Mr L had agreed to, and that had been covered by the warranty he’d bought separately. His assessment had only considered whether the car supplied to Mr L under the hire purchase agreement had been of satisfactory quality.

Our investigator said he accepted there was a fault with the car but – given the given the time Mr L had been in possession of it, and the mileage he'd driven – he'd seen no evidence it was present or developing at the point of supply – it was possible the fault he'd experienced was simply a result of normal wear and tear.

Mr L disagrees so the complaint comes to me to decide. He says that an independent inspection would not be able to determine the cause or timing of any oil leak; in order to determine the cause of any oil leak, a garage would need to fully steam clean the engine bay and then remove all the parts. He says his local garage told him that the oil leak is *“quite excessive and appears to have been present for some time, it would be difficult to put a timeframe on this...”*.

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 agree with our investigator – I don't think this complaint should be upheld – and I'll explain why.

When looking at this complaint I need to have regard to the relevant laws and regulations, but I am not bound by them when I consider what is fair and reasonable.

As the hire purchase agreement entered into by Mr L is a regulated consumer credit agreement this Service is able to consider complaints relating to it. ZBL is also the supplier of the goods under this type of agreement, and it is responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 (“CRA”) there is an implied term that when goods are supplied “the quality of the goods is satisfactory”. The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.

The relevant law also says that the quality of the goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods. So, what I need to consider in this case is whether the car *supplied* to Mr L was of satisfactory quality or not.

The CRA also says that, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless ZBL can show otherwise. But, if the fault is identified after the first six months, as is the case here, then it's for Mr L to show the fault was present or developing when he first acquired the car.

ZBL supplied Mr L with a used car – it was around eight years old and had been driven more than 65,000 miles – so the price of the car was lower than it would've been if it had been supplied new. Because of this I think it's fair to say that a reasonable person would expect that parts of the car might've already suffered wear and tear. And there'd be a greater risk in the future that this car might need repairs and maintenance sooner than a car which wasn't as road-worn when supplied.

I don't think there's any dispute that Mr L has experienced problems with the car - that has been well evidenced by both his testimony and the information he's sent us. But just

because Mr L has had problems with the car, and things have gone wrong, it doesn't necessary follow that the car supplied to Mr L wasn't of satisfactory quality.

Mr L used the warranty he'd separately purchased, and he agreed to some repairs to the alternator and drive belt. Because these repairs were carried out with Mr L's agreement, and under the protection afforded by the warranty, I'm only going to consider whether the subsequent faults highlighted by Mr L lead me to conclude the car was of unsatisfactory quality when supplied. I have, however, taken into consideration what Mr L told us about the initial repairs.

Mr L told us that the car had experienced a major oil leak, and there were a number of fault codes highlighted including ones relating to ABS, the parking brake, and the car's cruise control system, and that he raised these matters with ZBL in February 2023. But ZBL would only be responsible for putting things right if I'm satisfied that these issues were present or developing when the car was supplied – that is to say, the car wasn't of satisfactory quality when Mr L acquired it in July 2022.

I've considered very carefully the subject of *durability*. But, having done so, I can't uphold this complaint. I say this because the complaint about the oil leak and the fault codes was made more than six months after the car was supplied, so it's for Mr L to *prove* that these faults existed (or were developing) when he first acquired the car. And I haven't seen anything, for example, an independent engineer's report, that shows me that these faults were present or developing when the car was supplied to Mr L.

Furthermore, had the car done limited mileage since Mr L took possession of it, I might've thought it possible that these issues were present when the car was supplied. But he'd completed more than 11,000 miles in the seven months since acquisition – a greater level of mileage than the average driver. And, in the absence of an independent engineer's report confirming otherwise, I simply can't conclude that this mileage would've been possible had these faults been present seven months and 11,000 miles earlier.

I've also noted that the car passed its MOT in June 2022 and that there's no reference at this time to the presence of any oil leak or warning lights – something that I would've expected had these faults been present at this time.

Because of this, considering all the relevant circumstances, I'm not persuaded that Mr L's car was of unsatisfactory quality when supplied. So, I can't hold ZBL responsible for the problems Mr L has experienced with it.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 8 February 2024.

Andrew Macnamara
Ombudsman