

The complaint

Mr M complains that the car he acquired through a hire purchase agreement with Zopa Bank Limited trading as Zopa wasn't of satisfactory quality.

What happened

Mr M acquired a used car through a hire purchase agreement with Zopa in January 2023. He paid a £2,500 deposit and was required to make 60 monthly repayments of around £440.

Mr M raised a complaint with Zopa in April 2023 stating that the car had been remapped and then un-remapped prior to the point of supply. He said that he had been advised that the car needed a new engine control unit (ECU) but that the dealership was refusing to assist with repairs.

Zopa issued a final response in June 2023. It said it arranged for an independent inspection to be carried out on the car and it received the report from this on 31 May 2023. This said that the current evidence didn't clearly support the car having had the ECU remapped and unmapped but said that if further evidence of this was provided then it was likely a new ECU would be needed. Zopa sent the report to Mr M and asked for further evidence from the manufacturer to show when the car was remapped. It noted the information Mr M sent but said that based on what it had received it didn't uphold Mr M's complaint as there wasn't evidence to show when the car had been remapped or that the dealership was liable.

Mr M referred his complaint to this service.

Our investigator upheld this complaint. She said that based on the evidence provided there appeared to be a fault with the car. She noted that Zopa didn't uphold this complaint based on the independent inspection report but said this only provided limited evidence about the problems with the car. She said that on balance she thought it more likely than not that the remapping and un-remapping took place on the car prior to it being supplied to Mr M and as such the car wasn't of satisfactory quality at supply. She recommended that Zopa cover the cost of the repair and pay Mr M £100 for the inconvenience he had been caused by this issue.

Zopa didn't accept our investigator's view. It said that when a car is remapped it was likely to evidence certain symptoms which were not present in this case. It noted the mileage that Mr M had driven and said the issue hadn't impeded his use of the car. It said there was no evidence provided of the remap taking place. It said the car was provided with a new MOT and said that for a remapped car when referencing DPF issues there would be an emissions issue, but this wasn't found when the MOT took place. Based on this it didn't agree that the issue with the car was present at the point of supply.

Following this Mr M contacted this service to say that the car's starter motor no longer worked. He then provided details from the garage stating that the turbo had collapsed pushing oil into the DPF and ERG and causing damage. The garage said that these parts needed to be replaced and that these repairs wouldn't be covered by warranty due to the remapping. Mr M then contacted this service to say that due to the costs involved he wanted

to terminate his agreement and hand back the car.

Zopa confirmed that Mr M's agreement was terminated on 30 November 2023 after he requested a voluntary termination. The car was collected on 15 December 2023 and would be auctioned to reduce Mr M's outstanding balance.

Mr M said he wanted the outstanding balance written off as well as compensation.

Given the new issues that had arisen, our investigator issued a second view. She noted the additional issues that had been identified with the car since the first view was issued and said that these didn't materially change things as her previous outcome was that the car wasn't of satisfactory quality at supply and her view on this hadn't changed. However, given the agreement had been terminated and the car returned she couldn't now say that repairs should take place and instead said that the fair outcome would be for Mr M to be considered as having rejected the car. This meant that he should be refunded the deposit he paid on the agreement and have any outstanding balance on the agreement waived. She said that Mr M should have any rental payments made from November 2023 refunded along with interest as well as being paid £100 compensation. She also said that any adverse information recorded on Mr M's credit file should be removed.

Zopa didn't accept our investigator's view. It reiterated its position that there wasn't evidence of the remapping taking place and that the car passed an MOT at the point of supply. It noted the mileage the car had completed since Mr M acquired it and said that had there been issues with the DPF filter or ECU at the point of supply these would have been evidenced sooner. It said that the car was still awaiting sale and that it would hold Mr M liable for 50% of the agreement balance adjusted for the proceeds of sale.

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.

Mr M acquired a used car through a hire purchase agreement in January 2023. Under the regulations, Zopa can be held liable in certain circumstances if the car supplied wasn't of satisfactory quality. The Consumer Rights Act 2015 sets out that the quality of goods is satisfactory if it meets 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. It says that the quality of 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.

In this case the car Mr M acquired was first registered in May 2017 and had been driven over 49,000 miles at acquisition. Given this, it is reasonable to expect that it would have suffered some wear and tear. Mr M has noted some of the costs he incurred while using the car for items such as brake pads, oil changes and new tyres but given the car's age and mileage I find it reasonable that he would expect to pay for ongoing maintenance costs such as these.

The reason for Mr M's complaint is that in March 2023, the car underwent a health check, and the engine management light was on as a fault was noted with the DPF sensor. The car broke down on 14 April 2023 (with a mileage of 54,615 recorded) and the same fault was logged. A further inspection took place on 20 April 2023, and it was reported that the engine ECU was showing an inactive mapping and repair was recommended as the current ECU had been mapped. Because of this Mr M raised a complaint with Zopa that the car supplied wasn't of satisfactory quality.

As the issue was identified within the first six months of Mr M having the car, I find it reasonable that Zopa arranged for an independent inspection to take place. This took place on 23 May 2023 (the mileage at this time was 55,620). The diagnostics check revealed four fault codes linked with the DPF sensors. The inspector concluded that there were issues surrounding the DPF sensors. It said it hadn't seen the current ECU so couldn't comment on its condition and said its diagnostics were unable to confirm if it had been manipulated.

Taking the evidence provided from the garage invoices and the comments in the inspection report I find it reasonable to accept that there were faults with the car. The outstanding issue is whether the faults were the result of the ECU being remapped and unmapped and whether the faults were present or developing at the point of supply.

Where the evidence is incomplete, inconclusive or contradictory, as it is in this case, I make my decision based on the balance of probabilities. That is what I consider most likely to have happened given the evidence provided and the wider circumstances of the complaint.

In this case, the inspection report concluded that the faults found would not have been present or developing at the point of supply when taking into account the mileage covered by the car. That said the report went on to say that the faults identified may have been due to issues with the ECU and that further investigation would be needed. The report said it couldn't confirm that the ECU had been remapped and un-mapped and that further investigation was needed to confirm if this had happened and when. So, while the report didn't consider the issue to be the responsibility of the selling agent it said that if further evidence was provided to show the remapping and un-remapping then the issue would become the selling agent's responsibility.

While the inspection report didn't conclude that the issue was present at the point of supply, it also made it clear that further investigation was needed and that if evidence of the remapping and un-remapping was provided this could change the outcome.

Alongside the inspection report I have considered the other evidence provided. Mr M has provided a copy of an invoice dated 30 March which shows the car underwent a health check. A further invoice dated 6 April 2023 recorded the engine management light being on and in internal failure code for a sensor is noted. On 14 April the car broke down and the same fault was recorded (even though it noted the part had been replaced). While Mr M had covered a reasonable mileage, he had only had the car for around three months at this time. Mr M provided a copy of an invoice from the manufacturer's garage which notes on 20 April it ran tests on the car which showed the engine ECU showing an inactive mapping of the ECU. It recommended the ECU be replaced as the current ECU has been mapped. Considering this evidence alongside the comment in the independent inspection report that its diagnostics will not reveal whether the ECU has been remapped and unmapped and that the manufacture will need to determine this, I find on balance, it is more likely than not that the ECU had been remapped.

However, even if I accept the car was remapped then unmapped, I still need to be satisfied that this happened prior to Mr M being supplied with the car and that this (along with any other issues raised) meant the car wasn't of satisfactory quality at supply.

Mr M was supplied with the car in January 2023. On 12 January 2023, an MOT was carried out and this didn't raise any concerns. However, less than three months later at a vehicle health check the issue with the DPF was identified and this was then linked to the remapping and unmapping issue. While I cannot say for certain that the car was remapped and then unmapped before the car was supplied to Mr M, given the timing of when the issue arose and the nature of the issue identified I find it more likely than not that the remapping and unmapping occurred before the car was supplied. I note the comment made about the

emissions but as I cannot say whether this would have resulted in an emissions issue at the time of the MOT. And conversely, I do not find that not having an emissions issue identified at that time meant that the remapping hadn't occurred. What is clear is that DPF issues were noted very shortly after. As these issues caused problems with the car's performance (including it breaking down) and then further issues were identified (the turbo collapsed pushing oil into the DPF and ERG and causing damage) within the first year of Mr M having the car, I find on balance that the car wasn't of satisfactory quality at the point of supply.

Since Mr M referred his complaint to this service, he has terminated his agreement and the car has been collected. Had this not happened, I would have recommended that Mr M be allowed to reject the car and require Zopa to end the agreement with no further liability for Mr M and to collect the car from him at no extra cost. As the agreement has already been terminated and the car collected the remaining issue relates to the outstanding balance on Mr M's account. I appreciate that the car will be sold to reduce this but as I find that Mr M should have been allowed to reject the car, I find that he shouldn't be liable for any outstanding balance on the agreement. I also find it fair that the deposit he paid is refunded along with any payments he made from November 2023.

This issue has caused Mr M unnecessary inconvenience and I agree with our investigator that he should be paid £100 because of this.

Putting things right

The agreement has been ended and the car has been collected but there remains an outstanding balance on the account following the voluntary termination.

So, Zopa should:

1. Waive the outstanding balance on the agreement.
2. Refund the deposit paid by Mr M (recorded as £2,500 in the hire purchase agreement).
3. Refund Mr M any payment made towards the agreement from November 2023 onwards.
4. Pay Mr M £100 compensation for the trouble and upset he has been caused.
5. Remove any adverse information that may have been recorded in regard to this agreement from Mr M's credit file.

Items 2 and 3 are subject to simple interest at 8% per year from the date of payment to the date of settlement

If Zopa is required by HMRC to deduct income tax from any interest award, it should tell Mr M how much has been deducted and provide a certificate showing so if he asks for one.

My final decision

My final decision is that Zopa Bank Limited trading as Zopa should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 March 2024.

Jane Archer
Ombudsman