

The complaint

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

What happened

In August 2023 Mr S was supplied with a used car through a hire purchase agreement with Zopa. The agreement was for £18,312 over five years; with 60 monthly payments of £305.20. There was no deposit on the agreement. At the time of supply, the car was around seven years old, and had done 52,600 miles.

Mr S said that he put fuel in the car shortly after picking it up from the supplying dealer. He said that a short time later, smoke started coming from the engine, the engine warning light came on, and the front parking sensors came on.

He returned to the supplying dealer and left the car with them. He said they told him the fault was caused by him putting petrol in the car instead of diesel. He disputed this and provided a receipt from the petrol station that showed he had put diesel in the car. He said he wanted to reject the car because of the damage to the engine.

Zopa did not uphold Mr S's complaint. They said an independent inspection had shown the car to be of satisfactory quality when supplied to him. They also said they had not received evidence that proved he did not put the wrong fuel into the car. They said they would not allow him to reject the car.

Mr S was unhappy with this response, so he referred his complaint to our service for investigation.

Our investigator said the independent inspection confirmed faults with the car: namely an oil leak and wrongly fitted wiring. She said this meant Zopa had supplied Mr S with a car that wasn't of satisfactory quality and Zopa should end the agreement and collect the car. She said there was no evidence that the wrong fuel was the cause of any faults.

Zopa didn't agree with the investigator. They said the diagnostic report didn't provide sufficient detail about the wiring fault, and the oil leak highlighted wouldn't have prevented Mr S from using the car.

Because Zopa didn't agree, this matter has been passed to me 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. Where evidence has been incomplete

or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

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 S was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr S entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

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

There is no dispute that the car broke down on the day Mr S collected it from the supplying dealer. He returned to the dealer with smoke coming from the engine after just a few miles travelled.

The dealer maintained that Mr S had put the wrong fuel into the car. They said this was clear from the smell of petrol. However, Mr S has provided a copy of a receipt he obtained from the petrol station. It shows he put the relevant fuel, in this case diesel, into the car on the day he collected it.

I'm satisfied that the receipt shows it is more likely than not that Mr S fuelled the car correctly.

But we have no evidence what caused the car to breakdown. I have seen a diagnostic report provided by a main dealer. This was done a few weeks after Mr S had returned the car to the dealer. It makes no mention of the petrol issue – I suspect that's because the supplying dealer had already fixed that.

The report does highlight faults – it says the wiring was “*incorrectly fitted and insecure*”. It also highlighted a slight oil leak. As this report was done only a few weeks after the breakdown, and because the car had not been used by Mr S, I'm satisfied they were present at the time of supply. And as the report refers to incorrect fitting, I'm satisfied the faults were not due to wear and tear.

It's not clear from the information I've seen what caused the excessive smoke from the engine. But I am satisfied this indicates there was a fault or faults with the car – that may have been due to the issues highlighted in the report. In any case I'm satisfied that Zopa supplied Mr S with a car that was not of satisfactory quality.

The CRA gives consumers like Mr S a 30 day right to reject goods that are not of a satisfactory quality. Mr S told both Zopa and the dealer that he wanted to reject the car – and he did this within the first 30 days. As I'm satisfied that the car wasn't of satisfactory quality, this means Mr S is able to reject the car.

Putting things right

Mr S returned the car to the dealer on the day he purchased it. The car remained off the road and he wasn't able to use it. He wasn't supplied with a replacement car. As such, he was paying for goods he was unable to use. As, for the reasons I've already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as Zopa failed to keep Mr S mobile; I'm satisfied they should refund the payments he made under the agreement

Mr S has experienced distress and inconvenience as a result of Zopa supplying him with a car that was not of satisfactory quality. He had to return to the dealer on the same day he collected the car, and then make his own way home by public transport. He's had to use alternate methods of transport over a lengthy period of time to transport himself and his family.

So I think it would be fair for Zopa to pay Mr S £300 in compensation to reflect this distress and inconvenience.

I agree with our investigator that it wouldn't be fair to ask Zopa to cover Mr S's other costs. There is no evidence in the agreement with Zopa that Mr S paid a deposit so there is no cost to reimburse.

I also don't think in this case that Zopa should refund Mr S's travel costs as these were his own costs that he incurred. I won't ask Zopa to refund the road tax costs as Mr S didn't declare the car off road so he was liable for the taxing of the car.

Therefore, Zopa should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr S, unless this has already been done;
- remove any adverse entries relating to this agreement from Mr S's credit file;
- refund all the monthly payments made by Mr S towards the agreement as he had no use of the car;
- apply 8% simple yearly interest on the refunds, calculated from the date Mr S made the payment to the date of the refund[†]; and
- pay Mr S an additional £300 to compensate him for the distress and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If Zopa considers that tax should be deducted from the interest element of my award, they should provide Mr S with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

My final decision

For the reasons explained, I uphold Mr S's complaint about Zopa Bank Limited trading as Zopa and they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 September 2024.

Gordon Ramsay
Ombudsman