

The complaint

Miss H has complained that she is unhappy with the quality of a car she acquired in March 2023, using a hire purchase agreement with Zopa Bank Limited ("Zopa").

What happened

Miss H acquired a used BMW at the end of March 2023, using a hire purchase agreement with Zopa (although it looks as though Miss H actually took delivery of the car on 1 April 2023). The car dealership used a broker to arrange the finance with Zopa. The car was nearly seven years old, with a mileage of 90,392 stated on the hire-purchase agreement. (However the mileage noted on the MOT test in March 2023 was 90,396.) The cost of the car was £9,989, of which Miss H borrowed £8,489 over a term of 48 months, with a monthly repayment of £239.35.

On 24 July 2023 Miss H contacted the dealership to say that over the preceding few days the car had started to make a really loud noise. She said she'd taken it to a garage and had been told that there was a problem with the exhaust, in that it had dropped and needed to be re-welded, and the Diesel Particulate Filter (DPF) had a large hole and had snapped off from the exhaust. There were signs that the exhaust had been welded previously. Miss H said that a re-welding repair was attempted, but the noise returned the same day.

Miss H told us that the dealership said that its warranty had expired, but that she may be covered under her separate, third-party warranty which had six months' cover. She also contacted Zopa in August 2023.

Zopa said that it requested evidence about the faults, but didn't receive it, so it arranged an independent inspection of the car. It then found that the broker had already arranged an independent inspection with a separate company, so it cancelled its own inspection and awaited the report via the broker.

The independent inspection was carried out on 13 September 2023, to look at the faults Miss H had reported. The report noted a mileage of 96,751 at the date of inspection, but noted that *"the fault code in respect of the exhaust oxygen sensor was first triggered at 94,224 miles"*. So Miss H had travelled less than 4,000 miles when the fault code registered.

The inspection report included a list of eight fault codes that had shown on a diagnostic scan, and stated that:

"Within the scope of the inspection, it was confirmed that the exhaust had failed at the diesel particulate filter, resulting in detachment and displacement of the exhaust at the integral joint between the DPF and the exhaust front flexible section. For reference a photo of the entire assembly is included in the images. The owner / operator could not have caused or avoided the issue. The failure of the exhaust is a wear and tear gradual deterioration issue.

The manufacturer recommended rectification is to replace the entire diesel particulate filter assembly, including the integral flexible coupling. There are aftermarket repair solutions, which are not manufacturer endorsed, which include replacing the flexible section and

welding a replacement into place. In this case there has been a repair attempt to the joint but this was a basic and unsuccessful attempt at cementing the flexible section to the DPF. Further investigation and diagnosis is required in respect of the glow element issues and fuel rail pressure issues highlighted by the diagnostic scan."

The report went on to say that:

"We would conclude that it is clear the vehicle has been driving the vehicle in this unroadworthy and unfit for purpose condition for a considerable period. It is reasonable to conclude that the vehicle would have been unroadworthy and unfit for purpose at the point of sale."

Zopa issued a final response letter to Miss H on 11 October 2023, in which it explained that it had agreed to obtain repair quotations for the cost to rectify the issues with the DPF and exhaust, and to arrange recovery of the car from Miss H's address to the repairing garage. It also said that it had arranged for a payment of £450 to be made to Miss H to cover the cost of hiring a replacement car for two weeks, and for a further payment of £200 as an apology and for the distress and inconvenience caused.

The repair quotation had been obtained, but there was a delay in obtaining the relevant parts, and so the repairs were not completed until the end of October. Zopa paid Miss H further amounts of £450, £138.96, and £268 to cover car hire costs, and made a second payment of £200 in relation to the distress and inconvenience caused.

Miss H said the repairs were completed on 30 October 2023, but within a short time after collecting the car, it was making a noise again. She took the car back to the repairing BMW garage where she was told that the engine mounts were heavily perished and worn and needed replacing immediately, and the estimated cost was over £700. The garage also found that the engine cover rubbers were missing – Miss H paid for these to be replaced at a cost of £90. I have a copy of a job sheet for these items.

Miss H again contacted Zopa, saying that she now wanted to reject the car. Zopa arranged a second independent inspection of the car, with a separate company. Following this, Zopa said that the inspector had concluded that the engine mount issue would not have been present or developing at the point of sale. So, while it offered to assist with the repair costs, it said it did not agree that Miss H could reject the car and therefore it did not uphold her complaint.

Miss H was unhappy with this, so brought her complaint to this service. Our investigator looked into it, and thought it should be upheld. Zopa didn't agree, and asked for the complaint to be reviewed by an ombudsman.

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've decided to uphold Miss H's complaint. I'll explain why.

Because Zopa supplied the car under a hire purchase agreement, it's responsible for a complaint about the quality, and there's an implied term that the car was of satisfactory quality. Cars are of satisfactory quality if they are of a standard that a reasonable person would expect, taking into account all of the relevant circumstances such as (amongst other things) the age and mileage of the car and the price paid. When considering satisfactory

quality, I also need to look at whether the car is durable – that is, the components within the car must be durable and last a reasonable amount of time.

In this case of course, the car was nearly seven years old, with a mileage of 90,392 when Miss H acquired it. And the price was lower than that of a new car. So it's reasonable to expect that parts of the car would have suffered wear and tear, and that a car of this age would likely need repair and maintenance sooner than a newer car.

I've taken account of the relevant law, in particular the Consumer Rights Act 2015, ("CRA"). There are certain times, set out in the CRA, when a consumer is entitled to reject goods, in this case the car, if they don't conform to contract – a short term right to reject within 30 days of taking delivery, or a final right to reject if a repair or replacement hasn't resulted in the car subsequently conforming – that is, it then being of satisfactory quality.

Zopa sent in copies of the finance agreement, the invoice for the car from the dealership, its records of its contact with Miss H, recordings of various calls, and the independent reports. Miss H also provided copies of the independent reports, along with copies of her email exchanges with Zopa and the broker, and photographic evidence of the problems with the car.

The evidence provided by both parties confirms a current fault with the car – in particular with the engine mounts as I've noted above.

The first independent inspection report, arranged by the broker, stated that *"it is reasonable to conclude that the vehicle would have been unroadworthy and unfit for purpose at the point of sale"*. Following the report Zopa agreed to pay for repairs to the car, and to cover the cost of a hire car for Miss H. It also paid her compensation for distress and inconvenience. It said in its final response letter in October 2023 that it was upholding Miss H's complaint as *"repairs to the DPF and exhaust are necessary to ensure the vehicle is satisfactory in quality and fit for purpose"*. So it seems clear that, at that point, both parties agreed that the car wasn't of satisfactory quality at the point of supply.

The key issue is therefore whether the repair resulted in the car subsequently conforming to contract – that is, it then being of satisfactory quality.

As I explained above, Miss H had to return the car to the repairing garage almost immediately after the repair to the exhaust, because of a noise from the engine.

The BMW job sheet dated 2 November 2023 says that *"the engine mounts need replacing immediately"*. Zopa arranged the second independent inspection, and this engineer said that he concluded the car had been fit for purpose at the point of sale. However, looking at the more detailed aspects of his findings, I note the report states the following:

"The repairer is now stating that the engine mounts are all worn out which is causing excessive movement of the engine. The engineer believes that the repairer thinks the movement of the engine may have caused the exhaust catalyst to break."

The engineer has tested the engine movement and can confirm that there is movement evident which was not considered excessive, the visible inspection of the engine mounts was restricted due to the location. It is possible that excessive movement has caused the exhaust catalyst to break."

From the details provided, it is possible that excessive engine movement would have caused the exhaust catalyst to fracture. Movement is noticeable on the engine mounts and the engineer can advise that this is not uncommon for a vehicle of this age with the recorded

mileage. The mounts would have been worn at the point of sale; however the full extent of mount failure could not be established without further investigation and dismantling for bench checking and component comparisons".

I accept that engine mounts, like other car components, are subject to wear and tear. But from what's in the report, I'm not satisfied that the engineer carried out a sufficiently detailed inspection to reach a conclusion on the cause of the issue – the report states that visible inspection was limited, and that the full extent of the failure could not be established without further investigation and dismantling. And the engineer stated that *"It is possible that excessive movement has caused the exhaust catalyst to break."* So it seems to me that the second independent report can't be considered conclusive. It also seems quite possible that all the faults were related, especially given how quickly the current issues arose after the first repair, and given the comments in the report.

Therefore, I'm not satisfied that I can fairly conclude that the engine mount fault wasn't present or developing at the point of supply. And from the evidence I have, I also can't fairly say that the car conformed to contract following the first repair.

I've not seen anything to make me think that Miss H has caused or contributed to the faults occurring. So my conclusion is that the car wasn't of satisfactory quality at the point of supply, nor did it conform to contract after the repair. So I think it fair for Miss H to reject it, and therefore I've decided to uphold this complaint.

Although there have been these issues with the car, Miss H has had use of it, and has had use of a hire car, paid for by Zopa, when necessary, so I don't consider it fair to require Zopa to refund the monthly payments made under the agreement. However, I think Zopa should refund to Miss H the amount - £90 – that she paid for the replacement of the engine cover rubbers

I note that Zopa has also made payments totalling of £400 in respect of distress and inconvenience, in addition to covering the hire car costs. I think this is fair so I have not concluded that Zopa should pay a higher amount in this respect.

Putting things right

Zopa should:

- End the agreement with nothing further to pay.
- Collect the car at no further cost to Miss H.
- Refund Miss H's deposit contribution of £1,500, and the cost of the repair to the engine cover rubbers (£90), adding 8% simple interest* per year from the date she paid these amounts to the date the compensation is paid.
- Remove any adverse information from Miss H's credit file (if any has been added).

*If Zopa considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Miss H how much it's taken off. It should also give Miss H a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons given above, I have decided to uphold Miss H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept

or reject my decision before 11 December 2024.

Jan Ferrari
Ombudsman