

### **The complaint**

Mr D complains about the quality of a car he has been financing through an agreement with Zopa Bank Limited (Zopa).

### **What happened**

Mr D took receipt of a used car in April 2023. The car was about nine years old and had already completed about 95,000 miles. Mr D financed the deal through a hire purchase agreement with Zopa.

A few faults were reported by Mr D to the dealership within the first few days. There was, for instance, brown residue in the car, the interior light was dim and there was a problem with the rear wash jet that the dealership had to order parts for.

In September 2023 Mr D says the car started overheating and loosing coolant. Mr D paid a third-party garage, who I'll call "H", £562.88 to repair the problems, but the repair was unsuccessful. Another garage identified a leak coming from the thermostat housing. When Mr D took the car back to H they couldn't identify the fault. The car continued to overheat, the coolant level still dropped, and the engine started smoking. Mr D asked Zopa if he could reject the car, but they refused and explained they couldn't be held responsible for a failed repair by a third-party.

Mr D referred his complaint to this Service and our investigator thought it should be upheld. He thought there was evidence of a fault and regardless of the car's high mileage he thought the car should be expected to run without overheating. He noted that several attempts had been made to repair the car.

Zopa didn't agree with the investigator's opinion, and they asked for a decision 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 know it will disappoint Zopa, but I agree with the investigator's opinion. I'll explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here, I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Mr D acquired his car under a regulated consumer credit agreement and as a result our service is able to look into complaints about it.

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. If it wasn't then Zopa, who are also the supplier of the car, are responsible. The relevant law also says the quality of goods is satisfactory if they meet 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.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mr D. The car here was about nine years old and had already completed about 95,000 miles.

An old car with a high mileage will not be expected to be as good as a newer car with a low mileage, but it should still be fit for use on the road, in a condition that reflects its age and price, and the relevant legislation explains that it should be durable.

I'm not persuaded this car has been durable. While it was quite a high mileage car when supplied, I don't think a reasonable person would think a car of that age and mileage was suitably durable if, as is the case here, after it had completed 99,000 miles and only 4,000 since it was supplied, it couldn't be driven for more than a few minutes before it overheated.

Mr D has provided video evidence of the car smoking/steaming and of the coolant boiling. There's evidence from H that the car was presented to them on a couple of occasions with depleted coolant levels and they have replaced the thermostat twice in an effort to resolve matters. There's also evidence from the garage Mr D had the car serviced at, that the coolant level was low in October 2023, shortly after H attempted to repair it.

Zopa rejected Mr D's complaint as they said the supplying dealership should have been given the opportunity to inspect the car. I'm not persuaded they would have found anything different had they done so, and I don't think I have evidence H did anything wrong when they tried to repair the overheating issue. I've considered whether to give Zopa a chance to organise an independent inspection, but I don't think that would be reasonable here. They've had that opportunity since Mr D initially referred his complaint to them in October 2023, and I think Mr D has provided sufficient evidence to demonstrate there is a problem, and that the problem suggests the car has not proven durable. Mr D has explained that he doesn't believe the current problem can be rectified as it's a known fault with his car. I don't think I have sufficient evidence of that, but the relevant legislation allows the business just one chance to repair faults present when a vehicle is supplied and I think the business had that opportunity when Mr D returned the car and had repairs started to the rear washer jet. So, Zopa should now allow Mr D to reject the car.

### **Putting things right**

Zopa should collect the car at no cost to Mr D and they should end the finance agreement.

They'll need to refund any deposit Mr D has paid and, as he's been deprived of that money, they will need to add interest to that refund.

Mr D has had to pay to have repairs completed on the car because it was supplied in an unsatisfactory condition. Zopa should refund the £562.88 he paid, and they should add interest to the refund.

Mr D has been inconvenienced by these issues. He's had to take the car to be fixed on a couple of occasions. He's also had to escalate his complaint to this service when I think it could have been resolved earlier. Mr D has explained that public transport strikes have made it difficult for him to get around without the use of his car and he's struggled to visit and

care for sick relatives. He's explained that he has mental health issues and that these problems have exacerbated his condition. In those circumstances Zopa should pay him £500 compensation for the distress and inconvenience he's experienced.

I think the issues Mr D had before he was unable to drive the car anymore will have impaired his use of it. So, Zopa should refund 10% of rentals in respect of that impaired use.

Mr D hasn't been able to use the car since October 2023. It's not fair for him to be paying for a car he can't use, so Zopa should refund any finance instalments paid since then and waive any that were due and haven't been paid. They should add interest to the refund.

### **My final decision**

I uphold this complaint for the reasons I've given above, and tell Zopa Bank Limited to:

- End the agreement with nothing further to pay.
- Collect the car (if this has not been done already) at no cost to Mr D.
- Refund Mr D's deposit/part exchange contribution of £2000. Add 8% simple interest per year from the date of payment to the date of settlement.
- Refund all rentals from, and including, October 2023, in respect of loss of use. Waive any that were due and haven't been paid and add 8% simple interest per year from the date of payment to the date of settlement.
- Refund 10% of rentals paid before October 2023 in respect of the impaired use Mr D had from the car before October 2023. Add 8% simple interest per year from the date of payment to the date of settlement.
- Refund the £562.88 Mr D paid to have the fault diagnosed and repaired. Add 8% simple interest per year from the date of payment to the date of settlement.
- Pay Mr D £500 to compensate him for the distress and inconvenience caused.
- Remove any adverse information they may have reported to Mr D's credit file in relation to this issue.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 6 September 2024.

Phillip McMahon  
**Ombudsman**