

Complaint

Miss F has complained about the quality of a car that Zopa Bank Limited (“Zopa”) supplied to her through a hire-purchase agreement.

Background

In April 2023, Zopa provided Miss F with finance for a used car. The car was just under nine years old and had completed 79,981 miles. The cash price of the vehicle was £12,340.00. Miss F didn’t pay a deposit and applied for finance to cover the entire amount of the purchase. Zopa accepted Miss F’s application and entered into a 60-month hire-purchase agreement with her.

The loan had an APR of 10.9%, interest, fees and total charges of £3,533.99 and the total amount to be repaid of £15,873.99 was due to be repaid in 60 monthly instalments of £190.02 followed by a final payment of £264.57.

Although Zopa entered into the contract with Miss F she always intended for her son (who I’ll refer to as “Mr L” through the course of this decision) to have custody of the car and be its main user. Mr L is also representing Miss F in this case.

Mr L has said that the car says he began having issues with the engine management light (“EML”) illuminating within four to six weeks of taking delivery of the car. I understand that Mr L took the car to a garage to establish why the EML was illuminating and was told this was because the diesel particulate filter (“DPF”) required regenerating. Mr L continued using the car hoping that a regeneration would take place. However, this did not happen and the car ended up entering into limp mode and wouldn’t start. Mr L says after the supplying dealer did not return his calls or offer any help, Miss F complained to Zopa in September 2023.

As part of investigating Miss F’s complaint, Zopa arranged for the car to be independently inspected. The independent engineer inspected the car and confirmed that there was a fault with regard to the EML illuminating, the car losing power during a road test and there being fault codes in relation to the DPF. The independent engineer also confirmed his opinion that limited amount of miles covered in the period since the sale meant that the faults were likely to have been present at the time the car was supplied and that it wasn’t durable.

As a result of the inspection report, Zopa agreed that the car it supplied wasn’t of satisfactory quality. So it upheld Miss F’s complaint and agreed that the car should be repaired. Zopa’s final response indicates that the supplying dealer did not initially respond to its instruction to repair the car. As a result, Zopa was going to authorise a repair at a garage of Mr L’s choosing.

However, at, what can fairly and reasonably be described as, the eleventh hour, the supplying dealer informed Zopa that it was prepared to arrange the necessary repairs. It’s also fair to say that Miss L reluctantly allowed the broker to collect the car and deliver it to the supplying dealer for the repair to be carried out. It’s my understanding that Mr L was notified that the repairs had been completed on 11 January 2024 and he then collected the car from the broker on 22 January 2024.

Despite collecting the car, Mr L, on behalf of Miss F, referred the complaint to us around a week or so later. The initial reasons for the referral are unclear given there was an acceptance of the repair and the car had been collected. However, in March 2024, which was in the period between Miss F's complaint being referred and the complaint being passed to an investigator, Mr L notified the investigator and Zopa that the car had once again broken down since it was collected from the broker. At this point the investigator asked Mr L to provide a diagnostic report or independent report confirming the faults present on the car.

Mr L subsequently provided the result of diagnostic checks indicating that the car had faults with, amongst other things, the control unit, the electronic stability programme ("ESP"), the engine control unit ("ECU") and the transmission unit. He also provided photographs of the car's dashboard showing that a number of the warning lights were illuminating.

Miss F's complaint was then reviewed by one of our investigators. She thought the supplying dealer's repair, after Zopa agreed it had supplied Miss F with a car that wasn't of satisfactory quality, had failed. Therefore, she upheld Miss F's complaint and thought that Miss F was entitled to exercise her final right to reject the car.

Zopa disagreed with our investigator's view. It said that a further inspection should take place to establish liability for the additional faults. As Zopa disagreed with the investigator's assessment, the complaint was passed to an ombudsman for a final decision and the complaint has been passed to me to decide.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The finance agreement in this case is a regulated hire-purchase agreement, which we are able to consider complaints about. Under the hire-purchase agreement, Zopa purchased the vehicle from the dealership Miss F visited. Miss F then hired the vehicle from Zopa and paid a monthly amount to it in return. Zopa remained the legal owner of the vehicle under the agreement until Miss F's loan was repaid.

This arrangement resulted in Zopa being the supplier of Miss F's vehicle and so it is also responsible for answering a complaint about its quality.

The Consumer Rights Act 2015 ("CRA")

The CRA covers hire-purchase agreements – such as Miss F's agreement with Zopa. Under a hire-purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

The CRA says the aspects of the quality of the goods and whether they are satisfactory includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

Having carefully considered matters, I'm satisfied that, as the parties are in agreement that it wasn't, I don't need to decide whether the car supplied to Miss F was of satisfactory quality. All I need to decide here is whether the repair Zopa authorised was successful and if it wasn't what should now happen in order for things to be put right.

Miss F says that as she's had very little use of the vehicle and Zopa's attempt at a repair failed, she now wishes to reject the vehicle. On the other hand Zopa believes that the car needs to be inspected again.

Should Miss F be allowed to reject the vehicle

The CRA does permit a customer a final right to reject a vehicle in circumstances where there has been a repair and the goods do not conform to the contract. As Miss F argues that she now wants to reject the car, I've carefully considered whether the vehicle does not conform (or has not conformed) to contract since it was delivered after the repair.

Zopa wishes to arrange for a further inspection of the car because while it accepts that there may be faults, it believes that liability needs to be ascertained for these current faults.

I think that it would help for me to start by explaining that the CRA provides a customer with the final right to reject (the goods) should the goods not conform to the contract after a repair has been carried out. In my view, the CRA's use of 'conform to the contract', rather than successful repair, means that it not only the case that the DPF and any associated repairs have to have been completed, but that Miss F also has to be in a position where she is able to use the car.

So Zopa appearing to accept that faults are present on the car as well as the breakdown taking place such a short period of time after the repair, in themselves, provide a strong reason for Miss F to be able to reject the car. And isn't clear to me what purpose Zopa is looking to achieve with a further inspection.

In any event, even if it is the case that Zopa is arguing that these 'new' faults may be unrelated to the previous ones and an inspection is necessary to determine that they are, I'm not persuaded that available evidence supports this being the case here. I say this because the information that Mr L has already supplied persuades me that it is more likely than not that the faults currently present on the vehicle, are the same as, or the very least are linked to, the faults which meant that the car wasn't of satisfactory quality at the point it was supplied to Miss F.

To explain, Mr L has provided a photograph showing that the EML is illuminating. This is a problem which Mr L not only reported at the time of the original complaint but also was a fault that the independent engineer identified in his inspection. I'm also mindful that this is not the only warning light or fault code present since the repair, that the independent engineer found in his inspection.

As the investigator explained, the diagnostic check which Mr L arranged in March 2024 showed the following fault code appearing:

"PA200A21 – The charge movement flap (cylinder bank 1) has a malfunction the signal amplitude is less than the minimum amplitude".

I understand that is a fault code related to one of the cylinders in the engine and this was a fault code that the independent engineer reported seeing during his inspection. It therefore seems to likely to me that there was some kind of problem relating to cylinder 1, at the time of the initial fault, and this was resulting in the EML illuminating.

I accept that I am not a mechanic or an engineer. However, it seems fairly clear to me that there is a recurring theme of engine related issues manifesting themselves by the EML illuminating. I think it is likely that the supplying dealer focused on having the DPF repaired as there was a focus on the DPF being the major fault in Zopa's final response letter. It's

also possible that this is why although a number of other fault codes continue to appear, DPF fault codes are no longer present.

Nonetheless, I presume that Zopa will have passed on a copy of the inspection report to the supplying dealer when commissioning it to carry out the repair on its behalf. I think it is therefore reasonable to expect the dealer to have checked and repaired all the problems that the independent engineer found and not only resolve and repair the issues with the DPF.

In any event, regardless of whether or not the supplying dealer looked at any of the other issues highlighted in the independent report, given some of the same fault codes have reappeared a short period of time after the repair, it does not seem unreasonable to conclude that the current issues are related to the ones that the supplying dealer was supposed to have repaired.

So to the extent that it is necessary, I wish to make it clear that for the reasons I've previously explained I'm not actually persuaded that it is, I'm nonetheless satisfied that the issues Miss F and Mr L experienced in March 2024 are, at the very least, related to the faults they experienced with the vehicle prior to the repair.

As this is the case, I'm satisfied that after Zopa has had its one chance to repair the goods and those goods still do not conform to the contract. This means that I'm satisfied that Miss F has the final right to reject the vehicle.

I'll now consider what this means for what it would be fair and reasonable for Zopa to do to put things right for Miss F.

What Zopa needs to do to put things right for Miss F

As I've explained, Miss F has told us that she wishes to reject the car. I've also explained why, under the CRA, Miss F now has the final right to reject the car. As this is the case, I'm satisfied that it would be a fair and reasonable resolution for Miss F to reject the vehicle and for Zopa to collect it from her at no cost to her.

As Miss F will have rejected the vehicle, I'm satisfied that Zopa should end its agreement with her and ensure that she has nothing further to pay on it. This will seek to place Miss F in the position she would be in had she not entered into the hire-purchase agreement in the first place.

Miss F appears to have had no use of the vehicle, at all, since it broke down after the repair in March 2024. I've noted that this breakdown was just before the car's MOT expired and it hasn't been renewed. So I'm prepared to accept that the car hasn't been used since then.

I understand that Miss F has continued making payments to the agreement since, despite this and notwithstanding having not been provided with any replacement vehicle. In these circumstances, I think that Zopa should refund all of the payments that Miss F has made from her April 2024 payment onwards, plus interest at 8% a year simple.

I now turn to what usage if any Miss F has had up until March 2024. Having considered matters, the last recorded mileage on the car was 81,865. In these circumstances, I'm prepared to accept that in the limited period the car has been drivable, Miss F has been able to complete less than 2,000 miles in it.

Therefore, I accept and acknowledge that Miss F has had some -albeit extremely limited - use of the car. I also accept that there isn't an exact formula for working out fair usage. However, in deciding what's fair and reasonable in all the circumstances, I've thought about

the mileage she was able to complete and how many miles she might have expected to complete had the car been of satisfactory quality.

I don't think it unreasonable to conclude that Miss F was only able to complete around 20% or so of the mileage she expected to. So I don't think that the investigator's suggestion that Zopa should be able to keep 20% of the payments (and return the remaining 80%, plus interest at 8% a year simple) Miss F made up to and including March 2024 is unreasonable. I'm therefore directing Zopa to return 80% of the payments that Miss F made up to and including March 2024 plus interest at 8% a year simple.

Finally, I've seen that Mr L has provided a number of diagnostic checks and reports in order to support Miss F's complaint. It is unclear whether Miss F (or Mr L on her behalf) paid for these checks and reports. But if Miss F is able to provide invoices, or any other proof of having paid for them, these are costs which Miss F will have incurred because she was supplied with a faulty vehicle.

So, subject to Miss F providing invoices or other satisfactory evidence of having paid for any diagnostic reports or checks, I'm satisfied that Zopa should reimburse her for them, plus interest at 8% a year simple.

I now turn to any distress and inconvenience Miss F may have experienced. It's clear that Miss F had to deal with some of the stress associated with being supplied with a faulty car. That said, I realise that Mr L is likely to have experienced the bulk of the distress and inconvenience as a result of Miss F having been supplied with a faulty car.

But our rules only permit me to make award any distress and inconvenience experienced by the complainant. And in this case, Miss F is the complainant not Mr L. So I can't make an award for any distress and inconvenience that Mr L may have experienced.

Having considered all of this, bearing all of this in mind what I am able to make an award for, I think that Zopa should pay Miss F £100 for the distress and inconvenience caused by its actions.

Fair compensation – what Zopa needs to do to put things right for Miss F

Overall and having considered everything, I think it is fair and reasonable for Zopa to put things right for Miss F by:

- collecting the car from Miss F at no cost to her;
- ending the hire-purchase agreement and ensuring that Miss F has nothing further to pay. Zopa should also remove any adverse information it may have recorded against Miss F as a result of this agreement from her credit file;
- refunding 80% of the monthly payments that Miss F made up to and including March 2024 as well as all of the payments that she made to the agreement from April 2024 onwards;
- provided Miss F can provide receipts, invoices or some other kind of proof of payment, reimbursing her any costs she paid for any diagnostic work that was carried out;
- adding interest at 8% per year simple on any refunded and reimbursed payments from the date they were made by Miss F to the date the complaint is settled;

- paying her £100 in compensation for the distress and inconvenience that was caused.

† HM Revenue & Customs requires Zopa to take off tax from this interest. Zopa must give Miss F a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons I've explained, I'm upholding Miss F's complaint. Zopa Bank Limited should put things right for Miss F in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 7 January 2025.

Jeshen Narayanan
Ombudsman