

## **Complaint**

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

## **Background**

In August 2023, Zopa provided Miss K with finance for a used car. The cash price of the vehicle was £8,289.75. Miss K didn’t pay a deposit and applied for finance to cover the entire amount of purchase. Zopa accepted Miss K’s application and entered into a 48-month hire-purchase agreement with her.

The loan had an APR of 19.8%, interest, fees and total charges of £3,440.84 and the total amount to be repaid of £11,730.59 was due to be repaid in 48 monthly instalments of £244.39.

The car supplied was ten years old and the agreement states that it had completed 98,000 miles at the time of purchase. However, as the investigator has pointed out, the agreement should probably have stated 99,000 miles had been completed as the vehicle’s most recent MOT, carried out in April 2023, indicated that the car had already completed 98,867 miles by this stage.

Miss K began having difficulties with the vehicle in August 2023.

It isn’t in dispute that Miss K contacted the supplying dealer, in August 2023 itself, to explain that that she believed that there were problems with the car. Amongst other things, Miss K said that there were issues with the car not reaching temperature; the coolant being cold even after a long drive; there was no heating in the car and it only supplied cold air when switched on; there were issues with the windscreen wipers (insofar as she couldn’t get them to work manually) and washers and there was a vibration when the car reached 30mph.

The supplying dealer responded saying that the windscreen wipers worked automatically and in any event it asked Miss K to get the issues on the car checked out and then get back in touch. Miss K says that she found it difficult to arrange an inspection on the vehicle.

Nonetheless, the vehicle was taken to a garage of the manufacturer towards the end of October 2023. Miss K paid £78 for a vehicle health check. The health check indicated that there were issues with the wiper blades and the washers and the tyres, brake discs and brake pads were getting to the stage where they needed to be replaced and this meant that a road test couldn’t be performed. Finally, the report confirmed that the coolant had been contaminated.

On the same day, Miss K contacted Zopa to complain about the quality of the vehicle. What followed was a back and forth between Zopa and the broker of the finance agreement. Nonetheless, Zopa arranged for an inspection of the vehicle to be carried out and this took place in December 2023.

The independent engineer concluded that there were issues consistent with a head gasket failure, the front and rear brake discs and brake pads were worn, the windscreen wipers weren't working when manual use was attempted and the rear tyres were worn close to the legal limit. However, the independent engineer did not consider that these faults were present or developing at the time the vehicle was supplied to Miss K.

Subsequent to the engineer's report, Zopa issued its final response to Miss K's complaint on 20 February 2024. Zopa partially upheld Miss K's complaint. It accepted that the faults with the windscreen wipers were developing at the time the vehicle was supplied and the supplying dealer had agreed to repair this.

The supplying dealer also considered that there may at that point have been an issue with the engine but as the car had done around 5,000 miles after Miss K had begun having issues, it considered this had made things worse and it was only prepared to cover 50% of the cost of a reconditioned engine replacement. It considered the rest of the issues – in relation to the brakes and the tyres - to be wear and tear related that it was not responsible for.

Zopa considered this a fair resolution. And when the supplying dealer confirmed that it was not prepared to agree to Miss K's counter proposal of it making a cash payment in lieu of the 50% contribution to an engine replacement, Zopa did not propose to do anything else or anything further in relation to the vehicle. However, it did pay Miss K £200 for any inconvenience she may have experienced. Miss K remained dissatisfied and referred her complaint to our service. She wants to return the vehicle.

Miss K's complaint was reviewed by one of our investigators. He thought that Zopa supplied Miss K with a vehicle that was not of satisfactory quality and recommended that Miss K's complaint be upheld. He didn't think that Zopa's proposal to put things right went far enough and amongst other things, he thought that Miss K should be allowed to reject the vehicle and the agreement be ended with nothing further to pay.

Zopa disagreed with our investigator's view. As Zopa disagreed with the investigator's assessment, the complaint was passed to an ombudsman for review.

So the complaint has been passed to me to decide.

### **My provisional decision of 11 September 2024**

I issued a provisional decision – on 11 September 2024 - setting out why I was not intending to uphold Miss K's complaint.

In summary, I thought that Zopa's offer of paying £200 for the delays in resolving matters and getting the supplying dealer to repair the windscreen wipers and washers as well as contribute 50% of the cost of fitting a reconditioned engine was fair and reasonable in all the circumstances of the complaint. Therefore, I was not intending to reach a final decision that directed Zopa to accept Miss K's rejection of the vehicle and I wasn't intending to uphold Miss K's complaint.

### **Miss K's response to my provisional decision**

Miss K responded to say that she had arranged for the garage where the car was being stored to provide an estimate on replacing the engine on the car with a reconditioned one and replace the windscreen washer/wiper stalk. She asked if Zopa and/or the supplying dealer would agree to that garage carrying out the repairs (and that 50% of the cost of the

engine replacement as well as the whole amount of the windscreen washer/wiper stalk replacement would be covered) given the car couldn't be driven to another garage.

Notwithstanding this, Miss K reiterated her view that she did not believe that there was anything wrong with the head gasket and the engine did not need replacing. She felt that she would be paying for something that did not need doing.

### **Zopa's response to my provisional decision**

Having reviewed the estimates from the garage, Zopa confirmed that the supplying dealer agreed with Miss K's proposal that the garage where the car was being kept would carry out the remedial work needed. It also confirmed that that 50% of the cost of replacing the engine as well as the whole amount of the windscreen washer/wiper stalk replacement would be covered.

### **My findings**

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

I remain satisfied that what I need to decide in this case is whether the car supplied to Miss K was of satisfactory quality. Should it be the case that I don't think it was, I'll then need to decide what's fair, if anything, for Zopa to do put things right. This includes deciding whether Zopa should accept Miss K's request to reject the vehicle as she wishes to.

Having carefully considered matters, while I remain satisfied that there may be some issues with the car which require resolving, I don't think that it would be fair and reasonable for Miss K to reject the vehicle at this stage. I'm therefore satisfied that what Zopa has agreed to do, in light of Miss K's alternative proposal after my provisional decision, is fair and reasonable in all the circumstances and I'm not upholding Miss K's complaint. I'll explain why in a little more detail.

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 K visited. Miss K 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 K's loan was repaid.

This arrangement resulted in Zopa being the supplier of Miss K'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 K'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.

### *Is there a fault with the vehicle?*

Having considered the information provided I'm satisfied that there is a fault currently present on the vehicle. I say this because while there may be a dispute regarding the party

responsible for it, nonetheless there is an acceptance that there is a likely head gasket fault which may now extend to engine damage on the vehicle.

Furthermore, the supplying dealer also accepts that there is an issue with the windscreen washers and wipers and has offered to repair this as well. I'm satisfied that technicians and engineers all confirming issues with the car means that there a fault with the vehicle.

As this is case, I'll now proceed to decide whether the faults which I'm satisfied are currently present on the vehicle, means that the car wasn't of satisfactory quality at the point of supply.

*Was the vehicle that Miss K was supplied with of satisfactory quality and does this mean she should be able to reject it?*

It is clear that Miss K has had issues with the vehicle. But just because things have gone wrong with the vehicle, it doesn't automatically follow that it wasn't of satisfactory quality when it was initially supplied to her, or that this means Miss K should be able to reject the vehicle.

I've considered all of the issues that Miss K has highlighted and I'll now proceed to set out my thoughts on them.

#### *The windscreen wipers and washers*

There doesn't appear to be any dispute that there is a problem with the windscreen wipers and washers. Zopa and the supplying dealer both agree that this is the case and the supplying dealer has agreed to repair this.

I do accept that the windscreen wipers and washers are important features of a car and as they were not fully working as they should have been they may not have been of satisfactory quality. However, the CRA does permit a supplier the opportunity to repair a fault provided this is done within a reasonable period of time and without significant inconvenience to the consumer.

I accept that Miss K may not agree with this. However, I'm satisfied that both Zopa as well as the supplying dealer have been in touch to attempt a repair within a reasonable period of time and without significant inconvenience to Miss K. Indeed, the supplying dealer has been trying to arrange a repair with Miss K for some time and it has even offered her the opportunity of arranging for the repair of the windscreen wipers and washers herself and then it covering the costs of this.

So I'm satisfied that reasonable attempts have been made to try and repair the fault with the windscreen wipers and washers and while this repair hasn't been completed within a reasonable period of time, I don't think that this is down to Zopa, or the supplying dealer. Most importantly, I think that this means Zopa should have its opportunity to repair this fault.

Therefore, bearing in mind all the circumstances including any potential remedies under the CRA, I don't think that it would be fair and reasonable for Miss K to now reject the vehicle as a result of the windscreen wipers and washers and I'm satisfied that it would be fair and reasonable in all the circumstances for this repair that Miss K has arranged to now be carried out.

#### *The head gasket and other potential engine issues*

It's fair to say that Miss K reported having issues with the car getting up to temperature and the coolant around two weeks after taking possession of it. It's also fair to say that Miss K was instructed to get a diagnosis of the fault relating to the car's temperature as far back as August 2023.

I appreciate that Miss K has said that she had difficulties getting an engineer to look at the car as no one would touch the vehicle. However, Miss K didn't get the vehicle looked at until she took it to a garage of the manufacturer of the vehicle, in October 2023, for a health check. At this stage, the odometer on the car was at 102,225 miles which means that Miss K will have completed over 3,000 miles of her own since she took possession of it a couple of months earlier. During this health check the manufacturer garage confirmed that the coolant was contaminated and that this needed further investigation.

Miss K then took the vehicle for a separate diagnostic report to be completed in November 2023. At this stage the odometer on the vehicle read 102,774, which means that Miss K had completed around a further 500 miles in the two weeks or so since the visit to the manufacturer garage. The diagnostic report showed that there was a fault code showing on the engine control unit ("ECM"). The fault code recorded that the temperature sensor in the exhaust gas recirculation ("EGR") reached a temperature that was too high. In other words, the EGR was overheating.

The vehicle was then inspected by the independent engineer commissioned by Zopa. The inspection took place on 7 December 2023. The odometer at this point was reading 103,371 so another 600 miles or so had been completed since the diagnostic report Miss K arranged. The independent engineer's report concurred with the findings of Miss K's diagnostic report and confirmed that there was an issue with the combustion gases in the engine.

However, the independent engineer identified that there was an issue with the exhaust gases, but he also set out his opinion that this was consistent with a head gasket failure. He also said that this was also corroborated by the fact that the engine was not able to reach a consistent temperature, which was also a fault which Miss K reported in August 2023.

That said, the engineer considered that having to replace the cylinder head gasket on a vehicle of the age and milage of the car supplied to Miss K, was not unexpected and would be down to wear and deterioration. Finally, the engineer's reported stated that Miss K had been able to complete some 5,371 miles.

In actual fact bearing in mind the typographic error in the sales documentation, which the engineer appears to have relied upon, Miss K had only completed around 4,371 miles. In any event, the engineer cited the number of miles completed since Miss K acquired the vehicle as the primary justification for it being his opinion, from an engineering perspective, that the head gasket faults were not present or in development at the point the vehicle was supplied.

Zopa then wrote to the independent engineer separately to confirm that Miss K had reported the engine issue two weeks after the sale and asked whether Miss K failing to have the car repaired at that point was the cause of the fault. The independent engineer said that he was unable to make a determination of whether the delay in getting the vehicle repaired resulted in the fault.

As I've explained, it's clear that there is now a fault with the engine and I appreciate Miss K's correspondence with Zopa indicates she believes that there isn't a problem with the head gasket, but rather the EGR.

I also accept that Miss K has provided evidence from more than one engineer and none of this indicates that there is a problem with the head gasket. Furthermore, since my provisional decision, Miss K has also reiterated her view that there isn't anything wrong with the head gasket or the engine and she's since stated her view that the fault is with a seal in the tank and nothing to do with the oil.

Nonetheless, whilst I accept that the evidence Miss K has supplied doesn't state that there is a head gasket failure, I don't think that any of this evidence contradicts the independent engineer's report.

The independent engineer's report also confirms that there is an issue with the EGR but he doesn't merely just report that the ECM is showing a fault code relating to this – in the way that the engineer who completed the diagnostic report Miss K obtained in November 2023 did. The independent engineer goes on to state his opinion on what is causing this fault code.

So the independent engineer is not only referring to the symptom (i.e. highlighting that there is a fault code) he is stating his opinion on what is at the root cause of this fault code appearing. While Miss K has provided me with her view based on the current garage's view of what might be wrong and has questioned the depth of the independent engineer's investigation, I've still not been provided with an alternative independent report which disputes his finding. And, while I appreciate that Miss K may not agree with this, nonetheless a head gasket failure appears to be the most persuasive opinion that has been provided to me.

Furthermore, while I appreciate Miss K's strength of feeling, the fact remains that a component such as a head gasket will deteriorate over time and eventually require replacing. And, in my view, I don't think it's unreasonable that a car which has completed almost 100,000 miles will have a head gasket requiring some form of remedial work in the not-so-distant future.

The independent engineer stated that he is unable to determine whether the head gasket was a problem in August 2023, or whether this happened as a result of Miss K continuing to use the vehicle afterwards. That said, the video health check Miss K has provided does suggest that there was some contamination of the coolant in October 2023, which the engineer says requires further investigation.

This may have been the early stages of a head gasket failure, or it was a problem which led to conclusions reached in December 2023. Equally, the independent engineer's report does refer to the engine failing to reach temperature, which was something that Miss K reported to the supplying dealer two weeks after taking possession of the car.

However, I'm mindful of the overall context. As I've explained, Miss K was told to have the car looked at by an engineer and have any faults diagnosed in August 2023. So I don't think that this is a case where the supplying dealer ignored Miss K's correspondence. In any event, while I appreciate that Miss K says she found it difficult to get the car inspected she could have taken the car back to the supplying dealer. And I can't rule out the possibility that any fault if diagnosed and repaired at that point, would have prevented the need for the substantial repair the car appears to need now.

Even allowing for wait times etc, that fact is the first diagnosis or check on the car didn't take place until two months after Miss K first reported having problems and this was after Miss K had completed 3,000 miles of her own in the car. Furthermore, Miss K completed a further 1,300 miles or so by the time of the independent inspection. And the latest odometer reading I've seen is 104,306, which means that Miss K has completed close to another 1,000 miles

since the inspection and in total has completed close to 5,500 miles since she acquired the vehicle.

In these circumstances, I cannot reasonably conclude that Miss K's actions, in completing the number of miles she has despite being aware of and reporting a problem, did not significantly contribute to or exacerbate any possible engine issues being experienced now.

Therefore, while I accept that there may have been a fault with the coolant and potentially early stage issues with the head gasket at the time the car was supplied to Miss K, I think that Miss K's actions in driving the vehicle, for the amount of miles that she did in knowledge of the potential problem, is likely to have worsened the issue.

I say this in the knowledge that the vehicle had already completed close to 100,000 miles before it was supplied and so will already have had a significant amount of wear by this point. Driving a car with as much previous mileage, further, when there are early signs of an issues is likely to worsen these issues.

As this is the case, I'm not persuaded that the available evidence shows me that the engine issues being experienced now are as a result of Zopa supplying Miss K with a car that had a faulty engine to begin with. I think that Miss K's actions in continuing to use the vehicle in the knowledge there may have been a problem, are just as, if not more likely, the cause of any issues with the engine. Miss K says that she struggles to see why she is liable. But she hasn't provided me with anything persuasive that demonstrates her having driven around 5,500 miles despite being aware of a problem with the car, has played no part in or hasn't exacerbated the problem.

In these circumstances and as there is a strong possibility that the damage now is not limited to simply repairing the head gasket, I remain satisfied that it would not now be fair and reasonable to allow Miss K to reject the vehicle for this issue.

The supplying dealer has offered the possibility of covering half the cost of replacing the engine on the vehicle with a reconditioned one. It has also agreed to Miss K's choice of garage completing this repair. Having considered this and bearing in mind the fact that there was, an albeit likely much smaller issue present at the point of supply, I don't think that this is unfair. I therefore leave it up to Miss K to get in contact with Zopa and/or the supplying dealer to accept this offer should she wish to do so.

#### *The tyres, brake discs, brake pads and wheels*

Miss K has said, and has provided a health check supporting the fact, that the brake discs and pads as well as some of the tyres on the vehicle are close to needing to be replaced and at least one of the wheels is likely to need repair.

I do accept that the evidence provided indicates that Miss K has been told that these matters are likely to need rectification sooner rather than later. Again, I appreciate Miss K's frustration at this being required sooner than she anticipated when she took delivery of the car as well as her strength of feeling on this matter.

But the fact remains that the brake discs and pads as well as the tyres (and even the condition of alloy wheels) serviceable items that a reasonable person would expect to require replacing at certain intervals during the lifetime of the vehicle. The car also passed an MOT just before Miss K bought it. And the brake pads, brake discs and tyres were at an acceptable and legal level at that point.

So even though the brake discs, brake pads and tyres on the vehicle may need replacing and the alloy wheels may now need remedial work, I'm not persuaded that this means that the vehicle wasn't durable, or wasn't of satisfactory quality at the time it was supplied to Miss K. Indeed, I think it's likely that the mileage Miss K completed herself served to reduce the brake pads, brake discs and tyres further.

On balance and having considered everything, I think that Zopa's offer of paying £200 for the delays in resolving matters and getting the supplying dealer to repair the windscreen wipers and washers as well as contribute 50% of the cost of fitting a reconditioned engine, using Miss K's choice of garage, is fair and reasonable. Therefore, I don't think that it would be fair and reasonable for me to direct Zopa to accept Miss K's rejection of the vehicle and it follows that I'm not upholding Miss K's complaint.

I appreciate that this is likely to be very disappointing for Miss K – particularly as our investigator suggested that she should be able to reject the car, she believes the issues with the car have been misdiagnosed and she doesn't think the mileage she completed affected matters. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

### **My final decision**

For the reasons I've explained above and my provisional decision of 11 September 2024, I'm not upholding Miss K's complaint. I leave it up to Miss K to decide whether she wishes to accept Zopa's offer, on behalf of the supplying dealer, which it has confirmed remains available to her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 4 November 2024.

Jeshen Narayanan  
**Ombudsman**