

## **The complaint**

Mr S complains that the car he acquired financed through a Hire Purchase Agreement with Zopa Bank Limited wasn't of satisfactory quality.

## **What happened**

In February 2024 Mr S acquired a used car under a hire purchase agreement with Zopa. At the time that Zopa supplied the car to Mr S it was about 8 years old, and its mileage was approximately 113,000 miles.

Mr S said in February he experienced problems with the brakes on the car and a knocking noise from the front suspension. He said he resolved these issues without further pursuing a complaint.

Mr S said in May the car went back to the dealer to address some ongoing issues. He said a local garage had produced a diagnostic report that identified problems including issues with the injectors, DPF, and potential internal engine damage. He said it was agreed the vehicle would be repaired at no cost to him. He said the dealer extended the warranty by an additional three months (ending in August 2024). Mr S said the dealer failed to provide comprehensive documentation for the repairs. He said it only offered a summary of parts and labour after extensive work, including sending off the ECM for specialist testing, replacing the wiring loom and injectors.

Mr S said he received the car back on 3 July but discovered new issues – including engine oil level too high, keyless entry malfunction, spanner warning light on the dashboard. At this point Mr S decided to reject the car as he felt it wasn't fit for purpose. He said the repeated problems and repairs, totalling over £2,000 paid by the dealer left him with little confidence in the car's reliability. Mr S brought a complaint to Zopa.

On the night of 16 July the vehicle caught fire in a suspected arson attack.

In its final response Zopa didn't uphold Mr S's complaint. It said there was no evidence which confirmed the fire was linked to a failed repair or a pre-existing electrical fault that was present around the time of purchase.

Mr S wasn't satisfied and brought his complaint to this service. He said the situation had gotten out of control despite his diligent documentation of every step. He said the fire had meant he and his family had had to move to temporary accommodation. He said the situation has been very stressful especially for his child who has additional needs.

Our investigator concluded that given the nature of the faults, the problems appeared to be due to a reasonable level of wear and tear and so the car was of satisfactory quality when it was supplied. She also noted that Mr S had broken the terms of his hire purchase agreement by cancelling the car insurance while still in possession of the car. Mr S didn't agree and asked for a decision from 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 trust Mr S won't take it as a discourtesy that I've condensed the complaint in the way that I have. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the complaint. Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it but because I don't think I need to comment on it to reach the right outcome.

I'm very sorry to hear about the difficulties Mr S and his family are experiencing. I can see that the suspected arson attack has had a huge impact on his family and living situation and I hope this is resolved very quickly.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time. The finance agreement, that is the hire purchase agreement, in this case is a regulated consumer credit agreement. As such, this service can consider complaints relating to it.

Zopa is also the supplier of the goods under this type of agreement, and therefore it is responsible for a complaint about their quality. The relevant law includes the Consumer Credit Act 1974 and the Consumer Rights Act 2015. The Consumer Rights Act 2015, says, amongst other things, that under a contract, between a trader and a consumer to supply goods, there is an implied term that "the quality of the goods is satisfactory". The Consumer Rights Act 2015 also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory considering any description of the goods, the price and all the other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would consider might include things like the age and mileage at the time of sale and the vehicle's history.

It's not disputed that there were faults with the car. Some repair work was carried out but on receiving back the car Mr S noticed additional problems for which he provided a diagnostic report, including engine oil level too high, smart start unit malfunction and spanner warning light on the dashboard. At this point Mr S wanted to reject the car because in his view it wasn't fit for purpose.

This is a key point because if I am to decide the car wasn't of satisfactory quality I must be satisfied the faults were present at the point of supply. Faults that developed afterwards are not relevant. Moreover even if a fault was present at point of supply this will not necessarily mean that the car was not of satisfactory quality. This is because a second-hand car might be expected to have faults, for example worn tyres or damage from wear and tear but this will not necessarily mean the car is not of satisfactory quality.

Where the evidence is incomplete, inconclusive, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances. Because the car was destroyed in a fire I must rely on the evidence available at the time as it's not possible, for example, to arrange for an independent inspection of the car.

The car supplied was used, around eight years old, with approximately 113,000 miles on the clock and had a value of around £6,490 at the point when it was supplied. With a second-hand car with this above average mileage I think a reasonable person would expect it to

have some wear and tear which needs to be considered when I look at satisfactory quality.

Mr S said in February he experienced problems but resolved these issues himself without further pursuing a complaint. These problems related to the brakes and suspension. It is often the case that problems such as brakes and suspension occur as a result of wear and tear, especially on a car with over 100,000 miles. Though I can't say for certain it does seem possible that these issues wouldn't render the car of unsatisfactory quality.

Mr S was able to drive the car for three months after he acquired it.

The repairs completed in May were an oil change, exhaust pressure pipe, sensor and gasket, sensor wiring loom replacement. These repairs were paid for under warranty at no cost to Mr S. I've not seen any evidence to suggest these faults were present at the time of the sale. These repairs appear to be necessary as a result of wear and tear but even if they weren't and even if I was persuaded the faults were apparent at the point of sale the relevant law allows for the business to have one opportunity to repair. And it did so.

The faults identified in July do not appear to be related to those from May. It's possible that engine oil being too high may be related to the oil change but that was two months previously, or it could be due to something else such as contamination. I haven't seen any evidence which might persuade me these faults were present at the time of sale. I think it more likely these faults were as a result of wear and tear given the high mileage of the car. So it follows that I'm persuaded the car was of satisfactory quality when it was supplied.

In response to our investigator's view Mr S said the diagnostic report revealed significant issues with the car, the recommendation was clear that he should seek a full refund through Zopa, as repairing the car would only result in recurring problems. He said he was advised that a car with such issues would likely continue to experience problems even after repairs. He said he acted on this professional advice and contacted Zopa to declare the vehicle "not fit for purpose." He said at that point the dealer had offered to repair it for a third time.

I'm not disputing Mr S's testimony, and it's possible that the last problems would prove to be significant, but I'm not able to say with any degree of certainty that they were present when Mr S acquired the car, and weren't as a result of wear and tear.

Mr S has also said Zopa informed him that because the settlement (which he said had been agreed with the dealer) had not been paid, and because the car was destroyed in an arson attack, its hands were tied, and he should contact our service. He said it was deeply concerning that Zopa dropped their involvement after the arson, despite being fully aware of the situation.

Mr S has said the police are treating the fire as an arson attack and provided a victim statement stating that. So I'm persuaded the fire wasn't as a result of faults with the car. And as I'm persuaded the car was of satisfactory quality it wouldn't be fair or reasonable for me to require Zopa to unwind the agreement. In addition Mr S has admitted the car wasn't insured at the time of the fire which means he had broken the terms of his hire purchase agreement.

Mr S has described in detail the devastating effects of the car fire on his family and home. He is naturally frustrated and upset with the situation which has caused them stress and trauma and I am very sorry to hear this. He said after the fire, he researched the dealer more thoroughly and discovered numerous negative reviews within the last year, complaining about faulty vehicles, ongoing issues, and poor practices. He said Zopa, as a finance company, is responsible for conducting due diligence, and it is unacceptable that it allowed him to finance a car from a dealership with such a history of complaints. We have no

regulatory or disciplinary role over a business. So I'm unable to require Zopa to change the way that it conducts its business. My role is to look at the individual circumstances of each complaint.

Mr S has said he will not stop pursuing this matter until it is resolved fairly, and his next step will be legal action to seek compensation. I understand Mr S will be very disappointed with my conclusions. Nothing in this decision prevents him from pursuing the complaint through the courts. Although of course this would come with other costs and risks.

Mr S has indicated that he may be in some financial difficulty and may struggle to make the repayments. He should make contact with Zopa to discuss this. Businesses have a responsibility to respond sympathetically and positively to customers where they are aware of financial difficulty.

### **My final decision**

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 November 2024.

Maxine Sutton  
**Ombudsman**