

The complaint

Mr B has complained that he is unhappy with the quality of a car he acquired in December 2022, using a hire purchase agreement with Zopa Bank Limited ("Zopa").

What happened

Mr B acquired a used Citroen in November 2022 (the date of the agreement – although he took delivery of the car in early December after arranging the acquisition online), using a hire-purchase agreement with Zopa. The car was over seven years old, with a mileage of 75,215 at the point of supply. The cost of the car was £8,250, and Mr B borrowed £8,000 over a term of 60 months, with a monthly repayment of £182.01.

Mr B told us he'd had problems with the car from the outset, and had contacted the dealership two days after he got the car. He stated the issues as follows:

- the middle seatbelt was cut a quarter of the way through;
- screen washers didn't work;
- the battery and engine control unit covers were missing;
- the nearside electric folding mirror didn't work;
- the emergency key blade was missing;
- the air compressor and puncture repair kit was missing;
- the roller blind load cover was missing;
- there was damage and delamination on the instrument panel (he sent in a photograph of this).

The selling dealership was some way away, and Mr B said it asked him to get a quote for the repairs from a garage. He did this, but the dealership was not happy with it, and asked him to get a second quote. He refused to do this, because of the inconvenience of being without a car while the quote was being prepared. And the dealership was not prepared to cover the cost of replacing the instrument panel.

I have a copy of the job card showing the quote for the repairs, and the estimated cost was just over £2,400.

Mr B told us that the dealership then asked for the car to be returned to it so that the repairs could be completed there, but Mr B was not happy to do this as he would've needed to take time off work to deliver and then collect the car, and would've been without the car in the interim.

Mr B complained to Zopa in January 2023, because of the difficulties in arranging the repairs. Zopa issued its final response letter to Mr B in March 2023. It said it had partially upheld Mr B's complaint, as the dealership had accepted liability for some of the faults, and stated the following:

- the job card Mr B had sent in didn't provide details of the car or the issuing garage.
- the dealership had said it would cover the cost of the replacement parts and also third-party labour costs of up to £40 per hour plus VAT. Zopa asked Mr B to provide the relevant quotes to the dealership.
- the dealership didn't agree to repair the instrument panel, saying the damage was present on the original advert for the car. Having reviewed the advert, Zopa said it agreed with the dealership that the fault was visible and therefore it wouldn't hold the dealership liable for this. It also noted that Mr B had told it in February that he could buy a replacement panel for £500, and had asked for the dealership to cover this and the fitting costs, but the dealership refused again.
- Zopa arranged a payment of £50 in recognition of the faults
- Zopa asked Mr B for proof of payment of £70 for the quote for the repairs, so that they could issue a refund to him.

Following this, Mr B contacted Zopa to say that, after the dealership agreed to send out the necessary parts so that Mr B could organise the repairs, he received a generic puncture repair kit, a piece of plastic as the battery and ECU cover but which was too small to cover either, and a second-hand seatbelt mechanism of the wrong type. He had not received the wing mirror, rear luggage blind cover and emergency key blade and he couldn't engage with a garage until all the correct parts were received.

Mr B wasn't happy with all this, so he brought his complaint to this service. He would like to reject the car and cancel the agreement. Our investigator looked into Mr B's complaint, and thought it should be upheld. Zopa didn't agree and asked that it be reviewed by an ombudsman.

I should say here that Mr B has reported further problems with the car since he brought his complaint to this service. He has said that:

- he started having difficulty unlocking and locking the vehicle (and the emergency key is missing as noted above).
- he received a fault message saying the car should be taken for a service but this disappeared the next time he started the engine.
- a noise has started to come from the steering column when driving the vehicle.
- the air conditioning doesn't work, and a diagnostic test has shown a leaking aircon radiator and pipe.
- the injector needed to be replaced (along with the fuel filter).
- the vehicle is reporting that the key is not present in the vehicle even when it is in the key slot.

However, Zopa has said that it is considering these as the subject of a separate complaint, and I do not have its response. Therefore I am not considering these issues in this decision, but have simply noted them for the sake of completeness.

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 Mr B'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 the car was over seven years old, with a mileage of 75,215 at the point of supply. 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 a degree of 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.

Mr B sent in a detailed account of the sequence of events, a photograph of the delamination on the instrument panel, and a screenshot recording phone calls to the dealership within two days of Mr B acquiring the car. Zopa sent in copies of the hire purchase agreement, the advert for the car, its computer records of Mr B's complaint, and various emails.

Mr B has more recently sent in a copy of an independent inspection report he commissioned on the vehicle.

I've carefully considered all of the evidence sent in by both parties.

Zopa accepted that there were faults present in the car at the point of supply and agreed that the dealership ought to be liable for the cost of repairs (other than the instrument panel).

Much of the content of the recent independent inspection report relates to the more recent faults, which I am not considering here, but it refers to a document from January 2023 (which seems to be the job card) saying:

"It is our opinion, based on the evidence which has been supplied that the faults of which are listed within the document dated the 11/01/23 are faults of which would have been present or in development at the point vehicle sale. These faults are: key blade, instrument cluster, seatbelt reel, mirror, washer jet."

It goes on to refer to the delamination of the instrument panel, and says *"This would be due to deterioration and would have been present or in development at the time of vehicle sale."*

So I don't need to look at whether there were faults present at the point of supply – it's accepted this was the case.

I have considered whether Mr B ought reasonably have been aware of the damaged instrument panel when he acquired the car. The dealership said the damage was evident in the original advert for the car - and Zopa agreed after reviewing the photos from the advert.

I've examined the photos sent in by Zopa. I agree with our investigator's conclusion that one of the photos shows a mark of some kind, but the distance and angle of the photos means

that it's not clear there was a fault. None of the photos was taken directly facing the panel, or particularly close to it. And the advert did not include any reference to the damage. However, and as I noted above, Mr B sent in a photo of the panel, taken directly in front of it. This clearly shows the damage. So taking all this into account, I'm not satisfied that Mr B could reasonably have been aware of the damage when he acquired the car.

The next point I need to consider is whether the car was of satisfactory quality at the point of supply. Given the faults set out above, I don't think it was. I accept that the car was some seven years old at the point of supply, but the faults became evident immediately, and Mr B contacted the dealership straight away (and I note the job card listed repairs totalling over £2,400). I don't think that a reasonable person would consider that satisfactory.

As I consider that the car was not of satisfactory quality at the point of supply, I've decided to uphold this complaint. The question is then one of appropriate redress.

Our investigator thought it fair that Mr B should be able to reject the car and end the agreement. She took account of incorrect parts having been sent, and thought that Zopa had had sufficient time to arrange for the parts to be sent and to reconsider its position about the instrument panel, before Mr B approached this service. She further took account of the additional delays and inconvenience repairs would cause.

In response to our investigator's view, Zopa said it disagreed, and raised a number of points as follows:

- it had previously approached the dealer to resend the parts, but was not able to get a response from the dealer.
- to help progress matters, it asked Mr B to provide a quote from a third-party garage, so that it could understand what parts were needed (and it said it would look to assist with labour costs);
- Mr B had said until the parts were received from the dealer, he could not gather the quote Zopa needed – but it said it would need a quote to understand what parts were needed and understand the costs to be incurred.
- Despite several requests, Mr B had not provided quotes. He had also not provided evidence of the more recent faults.
- It agreed that the dealer had contributed to some of the delays in relation to the missing parts.
- Mr B chose to have the parts replaced and not reject the car and therefore the onus is also on him to provide the information Zopa needed to help with covering costs for parts and labour.
- The delamination of the instrument panel is clearly visible in the photograph for the original advert; therefore, it stands by its earlier decision of not holding the dealer liable or covering costs for this to be repaired.
- The faults listed do not impede the performance of the vehicle and it would consider wear and tear related given the vehicle is now eight years old.
- It could not agree that our investigator's recommendation to reject the vehicle is fair.

I've explained above why I think that the delamination of the instrument panel was not clear from the advert, and Zopa has not provided any new information on this point. I've also noted that I am not considering the more recent faults in this decision. The faults I am considering were present at the point of supply, and I've explained above why I don't think a

reasonable person would find it satisfactory - I think they would expect to be able to use the car for a reasonable period before incurring repairs of that magnitude.

Otherwise, Zopa is not arguing that the complaint should not be upheld – indeed it partially upheld Mr B's complaint when he first made it – rather, it is disagreeing that Mr B should be able to reject the vehicle and end the agreement.

I've carefully considered the points Zopa has made, but my conclusion is that it *would* be fair for Mr B to be able to reject the car. I say this because the problems were evident immediately Mr B took delivery of the car, and Zopa accepts that the dealership had contributed to delays in dealing with the parts required (and I note Mr B's comments about the wrong parts being sent and Zopa's comment that it could not get a response from the dealership). I accept that Zopa had asked Mr B for quotes, but from what both parties have said it seems there was something of a stalemate about whether the parts were needed before a repair quote could be obtained. I think Zopa could've done more to progress matters – it looks from Zopa's complaint notes that there were no phone calls to try and resolve matters – and Mr B has told us about his family and other commitments which make it difficult to be without the car while quotes are prepared.

Overall, on the basis that the problems started immediately and hadn't been resolved some six months later, I'm satisfied that it is fair for Mr B to be able to reject the car and end the contract.

Although I am satisfied that the car wasn't of satisfactory quality at the point of supply, I accept that Mr B has had use of it since then, so I don't consider it fair to require a refund of monthly payments due under the contract.

However, in recognition of the distress and inconvenience caused to Mr B, I think it would be fair for Zopa to pay him £100 compensation to reflect this (in addition to the £50 it has already paid). I also think it fair to require Zopa to refund the amount Mr B paid to have the windscreen washers replaced because of the delays with the dealership. This was £72, and Zopa has been given a copy of the invoice and receipt.

Putting things right

Zopa should:

- end the agreement with nothing further to pay;
- collect the car at no further cost to Mr B;
- refund to Mr B's deposit/part exchange contribution of £250;
- refund to Mr B £72 for the windscreen washer repair as described above,
- pay 8% simple yearly interest* on all refunded amounts from the date of payment until the date of settlement;
- pay a further amount of £100 for the distress and inconvenience caused due to the faulty vehicle;
- remove any adverse information from Mr B's credit file in relation to the agreement (if there is any).

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

My final decision

For the reasons given above, I have decided to uphold Mr B's complaint. Zopa Bank Limited should compensate Mr B as described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 January 2024.

Jan Ferrari
Ombudsman