

## **The complaint**

Ms S complains Zopa Bank Limited (Zopa) supplied her with a car that she believes wasn't of satisfactory quality at supply.

## **What happened**

In March 2023, Ms S entered into a 60 month agreement for a used car. The car's cash price was around £20,500, it was registered in March 2016 and it had travelled over 78,800 miles. She paid a deposit of around £4,100 and the rest was financed via a loan with Zopa. The monthly payments were £329.

Within days of acquiring the car, she returned it to the dealership. She reported the following issues:

- Low battery – impacting the audio and satellite navigation;
- Abnormal noises coming from the speakers (popping/fuzzing);
- Parking sensors were not working;
- When turning right and reversing, there's an abnormal sound from underneath the car and the brakes;
- The auto wipers didn't work.

She also complained the car was sold with 12 month warranty but she only received 3 months. According to her, the dealership said they would correct this but that never happened and the policy has since expired.

The car was returned to the dealership in April 2023 and some repairs were carried out to fix the electrical faults. They said the battery had got weak as it was on the forecourt for some time before Ms S bought the car. Ms S replaced the battery however she complained the faults related to the abnormal noises remained.

In May 2023, the car was taken to a third party garage who I will refer to as N. They identified the noises. N said the heat shield for the DPF had broken, become loose and a bolt had got stuck which created a rattling noise. They also said the grinding noise heard when turning was due to the recently replaced brakes. The backing plate was touching the disc which N pushed back. The car was taken on a road test and the abnormal noises were no longer present. Ms S wasn't charged for this by N.

Zopa said repairs had been carried out on the car which had resolved the issues and there was no evidence faults remained. They didn't agree to rejection but offered £50 compensation for the trouble and upset caused.

Unhappy with their response, Ms S referred the complaint to our service. The investigator recommended the complaint was partially upheld. He accepted there were some initial issues with the car but they had all been fixed. To put things right, he recommended Zopa:

- Reimburse Ms S for the cost of the battery;
- Refund one month instalment to reflect loss of use of the car;
- Pay 8% simple interest per annum on the above refunds from the date of payment to the date of settlement;
- Pay an additional £100 compensation to Ms S for the trouble and upset caused.

Zopa disagreed. In summary they said:

- They didn't agree to reimburse the battery as it's a serviceable part of the car;
- Ms S delayed in collecting the car so they don't agree to refund a month's payment,
- Their offer of £50 was sufficient;
- A third party garage completed the repairs therefore this removed Ms S' right to reject the car and denied them the opportunity to investigate if any repairs failed.

Since then, Ms S has complained there are additional issues including the central locking not working on one of the passenger doors and the air conditioning isn't working as it should.

In March 2024, I issued a provisional decision partially upholding the complaint. I said:

*"Ms S acquired a car under a regulated credit agreement. Zopa was the supplier of the goods under this type of agreement meaning they are responsible for a complaint about the supply and the quality of the car.*

*The Consumer Rights Act 2015 (CRA) is relevant to this complaint. It says that, under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory". To be considered "satisfactory", the goods would need to 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 involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage. The quality of goods includes other things like fitness for purpose, appearance, freedom from minor defects, safety and durability.*

*In this case, Ms S acquired a car that was around seven years old and had travelled around 78,800 miles. As this was a used car with considerable mileage and age, it's reasonable to expect parts may already have suffered substantial wear and tear when compared to a new car or one that is less travelled. Meaning there's a greater risk this car might need repair and/or maintenance sooner than a car which wasn't as road-worn.*

*Based on the evidence presented to me which includes email correspondence between Ms S and the dealership, a job card from N and Ms S' version of events, I find there was a fault with the battery and some electrics. The exact repairs carried out by the dealership isn't clear but from my understanding an amp was replaced. I find their explanation as to why the battery was weak to be plausible. However I don't believe a reasonable person would expect such issues so soon after acquiring the car so I can't say it was sufficiently durable meaning it wasn't of satisfactory quality.*

*Ms S has confirmed the electrical faults were fixed at no cost to her but she was required to pay for the battery. As this was a cost incurred as a result of the fault, Zopa should refund her this amount (subject to evidence being provided).*

*Regarding the abnormal noises, the dealership said they had taken the car for a road test and couldn't hear it nor locate the source of where it was coming from. It's unfortunate they were unable to do so but sometimes this happens especially if a fault is intermittent. From my understanding N managed to locate it by removing a bolt that had got stuck and pushed back the backing plate of a brake pad. Ms S wasn't charged for this and it appears to have resolved the issue.*

*I wouldn't say this particular issue for a car of this age and mileage would also mean it wasn't of satisfactory quality at supply. It's not uncommon for things like this to happen on a car that has significant wear and tear. But I agree it's unfortunate this wasn't identified by the dealership and I appreciate the frustration and inconvenience it caused Ms S.*

*Ms S says had the car been sufficiently serviced prior to acquiring it, these issues could've been dealt with. While that may be the case, I don't have sufficient evidence to suggest the car was sold with a full service history or it had been explicitly agreed one would be carried out before she bought the car.*

*Ms S complains there are further issues with the car relating to the air conditioning and central locking. However these issues weren't raised when she complained to Zopa so it doesn't appear they've had the opportunity to look into this. Moreover, I haven't seen sufficient evidence about these faults. That isn't to say they don't exist but I don't have enough evidence about it and even if I did, I would need to be satisfied it makes the car of unsatisfactory quality. Given these new issues were raised several months after supply and presumably Ms S has been using the car, it's not wholly surprising to hear about them. Above, I've already set out the expectations of a used car and the fact that repairs and maintenance may be needed. Given the age and mileage, some parts may be nearing the end of its life-span.*

#### *The warranty*

*Ms S says the car was sold with a 12 month warranty but she only received 3 months and because that's now expired she no longer has the benefit of it. She says the dealership told her they would sort this out but that hasn't happened.*

*Having looked at the agreement, I can't see there's any mention of the warranty. I also haven't been provided with the advert for the car, any information about the warranty or what was said about it. In the absence of sufficient evidence, I can't reasonably say Ms S was told incorrect information about the warranty. If either party has evidence about the same that they want me to consider, I will do so before reaching a final decision.*

#### *Summary*

*Taking everything into account, I find the car wasn't of satisfactory quality at supply due to the issues with the battery and electrics. However I'm satisfied these have been fixed. So I won't be saying rejection should be allowed as that wouldn't be a proportionate remedy.*

*To put things right, I agree Ms S should be refunded the cost of the battery, refunded a month's payment to reflect the loss of use of the car when it was returned to the dealership. Based on the correspondence I've seen, I don't agree she refused to pick the car up sooner.*

*Rather she was asking about what repairs had been carried out to ensure it was fixed before she collected it, which is understandable.*

*I've also thought about the impact of this situation on Ms S including the trips to the dealership and the extent of the communication with Zopa and the dealership. I'm sorry to hear the car didn't perform as expected. Given the circumstances, I agree with the investigator that Zopa should pay an additional £100 to reflect the trouble and upset caused. Meaning a total of £150 compensation".*

#### *Response to the provisional findings*

Ms M disagreed with the provisional findings, in summary she said:

- She didn't replace the battery. When she initially returned the car to the dealership they said they would do so, but didn't. She keeps jump leads just in case the battery fails;
- She was told the car would come with 12 months warranty and she has a video provided by the dealership which supports the same;
- The issues with the central locking, air con and heated windscreen would've been covered under warranty had she been given 12 months as agreed. She provided images of the windscreen;
- The dealership only repaired the electrics;
- The car was MOT'd recently in March 2024. Although it passed, it was noted that there was an oil leak (not excessive- advisory only), the front tyre is close to the legal limit, an issue with the front suspension arm ball joint and a leak to the aircon;
- She was told the front tyre was changed when she bought the car;
- She doesn't believe the MOT carried out before she bought the car was adequate;
- She wants to reject the car.

Zopa also disagreed, they said:

- The maintenance of a car's battery is down to the consumer;
- They don't have evidence of Ms S refusing to collect the car but they've taken into account what the dealership said happened;
- There was 12 month warranty in place but the replacement of a battery wouldn't be covered;
- The additional issues weren't raised within 12 months meaning the warranty had expired and the dealership can't help further.

#### **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 thank both parties for their further responses which I've carefully thought about.

I remain of the opinion that there was a fault with the battery when the car was supplied. While I accept it's a serviceable part of the car, I don't expect it to have issues immediately upon Ms S acquiring it. Ms S has lost confidence in the dealership to replace this, therefore

she should arrange for the battery to be replaced by another party and Zopa should cover the cost of the same (upon proof of evidence).

I still don't have sufficient evidence that there are faults with the air con, central locking and heated windscreen nor that they were present or developing at supply. On balance, if they are present, I find it's more likely than not it's a result of wear and tear given the car's age and mileage.

The car was MOT'd before Ms S acquired it. I don't have enough to suggest it was inadequate bearing in mind, cars are subject to a number of checks as part of the MOT test. I've reviewed the recent MOT test certificate and although it passed, I note there are multiple advisories. However I must also bear in mind that the car had travelled in excess of 89,400 miles by the time of the test meaning Ms S has travelled over 10,000 miles since acquiring the car. Given her use of it and the age and mileage of the car, it's not unreasonable for there to be faults developing which require repair and/or maintenance. I don't find these issues make the car of unsatisfactory quality.

Ms S provided a video from the dealership before she entered into the agreement, during which they confirm the car would come with 12 months warranty. A copy of the same was provided to Zopa for their further comments and they maintain there was 12 months warranty with evidence provided by the dealership. However Ms S has also provided evidence of warranty and it states the policy ended in July 2023, meaning she only had 3 months warranty given the car was purchased in March 2023. I'm most persuaded by Ms S' evidence as it's directly from the warranty provider, it's addressed to her and let's her know the policy is expiring.

Based on what I've seen, I find it's more likely than not the dealership didn't provide the 12 month warranty as they said they would therefore that was a breach of contract. Under section 56 of the Consumer Credit Act 1974, Zopa can be held responsible for antecedent negotiations by the dealership before Ms S entered into the agreement.

Ms S says had warranty been in place, these additional issues with the car would've been fixed under the policy. However having looking at the warranty documents she's provided and what's covered, I can't agree. I note it explicitly says it won't cover things like the recharging of the air conditioning unit, wiper blades, wiring and connections, wheels, tyres, etc. So if repairs or maintenance were required for these parts of the car, Ms S' would be responsible for paying it. I haven't been provided with any other sufficient evidence to suggest there were faults with the car that would be covered by the warranty so I can't reasonably say detriment has been caused to Ms S as result of not having the 12 month warranty.

However I acknowledge her upset about this and the fact she didn't get what she was told she was going to receive and she will now have to pay for extended warranty should she decide to do so. For this, I believe it's fair Zopa pay an additional £200 compensation for the trouble and upset caused. Meaning, they must pay a total of £350 compensation to Ms S.

On the basis I haven't been provided with any further information to materially change my decision I still consider my findings to be fair and reasonable in the circumstances.

### **My final decision**

For the reasons set out above, I've decided to partially uphold Ms S' complaint.

To put things right, Zopa Bank Limited must:

- Cover the cost of the battery to be replaced (subject to proof of evidence);
- Refund one month's instalment to reflect the loss of use of the car;
- Pay 8% simple interest per annum on the above refunds from the date of payment to the date of settlement\*;
- Pay a total of £350 compensation to Ms S for the trouble and upset caused.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 18 June 2024.

Simona Reese  
**Ombudsman**