

The complaint

Miss D complains about the quality of a car she acquired through a hire purchase agreement financed by Oodle Financial Services Limited trading as Oodle Car Finance (Oodle).

What happened

In July 2019 Miss D acquired a used car through a hire purchase agreement. The car was seven years old and had a mileage of around 35,000 miles. In April 2020 the car suffered engine failure and Miss D arranged for it to be towed to her home address. She has been unable to drive the car since.

Miss D arranged for the car to be inspected by a garage and began a claim under warranty. When Miss D was told that the warranty wouldn't cover the full cost of repairs, she contacted Oodle to ask them to pay for the repairs as she felt that the car wasn't of satisfactory quality when it was supplied.

Oodle said that Miss D would need to evidence that the fault was present or developing at the time of supply. They recommended that she obtain an independent inspection report for them to review.

Miss D had the car inspected in May 2020 and sent the report to Oodle. That report confirmed that the car misfires and concluded that the most likely cause was as a result of piston ring damage. It noted that there was insufficient evidence to say that the engine damage was present at the point of sale and noted that the car had passed an MOT after it was sold. Oodle didn't agree that they were responsible for the fault following review of the report.

Miss D had the car inspected by the manufacturer and sent that report to Oodle. The report confirmed that the piston had broken up and caused substantial damage to the engine. It concluded that the exact cause of the failure was unknown, but a new engine would be needed. Oodle sent their final response to Miss D telling her that as neither report confirmed the faults were present or developing at the point of sale, they would not be responsible for the cost of the repair.

Unhappy with this, Miss D brought her complaint to our service. Our investigator looked into things for Miss D and felt that the car was not of satisfactory quality at the time of supply. They said that they didn't think the car was reasonably durable and recommended that Oodle cover the cost of repair to the car, along with refunding the cost of the reports Miss D had obtained, refunding the cost of Miss D's monthly payments while she was unable to use the car, and paying Miss D £150 compensation to reflect the distress and inconvenience caused.

Oodle didn't accept our investigators view. They say there's no evidence that the fault was present or developing at the point of supply. They have provided comments from the dealership which suggest that a service completed by Miss D after she purchased the car might have led to the problem she experienced later. They asked for an ombudsman to review the complaint.

I issued a provisional decision on this complaint in January 2021 recommending that it was upheld. I made the following provisional findings:

In considering what's fair and reasonable, I need to have regard to the relevant law and regulations. The agreement in this case is a regulated hire purchase agreement – so we can consider a complaint relating to it. Oodle as the supplier of the goods under this type of agreement is responsible for a complaint about their quality.

The Consumer Rights Act 2015 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 other relevant factors. Those factors, in the case of a car purchase, will include things like the age and mileage of the car at the time of sale, and the car's history.

The quality of the goods includes their general condition and other things like their fitness for purpose, appearance and finish, safety and durability.

Here, the car was acquired used with a cash price of around £15,000. It was 7 years old and had travelled 35,000 miles at the time of supply. With this in mind, although there is an element of wear associated with the age of a vehicle, I think it's fair to say that a reasonable person would expect the level of quality to be higher than a cheaper, higher mileage, vehicle.

The car has a full service history and appears to have been well looked after both prior to and after the point of supply. Miss D had the car serviced shortly after acquiring it, and it passed an MOT prior to this fault occurring.

Oodle have said that because the fault happened more than 6 months after supply, Miss D needs to evidence that it was present or developing at the point of supply. So, Miss D has supplied reports from two independent engineers.

Both reports are inconclusive on what has caused the damage to the engine. The first comments that the excessive smoke and engine damage were not present at the point of supply, but neither report appears to have sufficient regard to whether the car was durable. The conclusion that the symptoms of engine failure were not present at the point of supply doesn't deal with the fundamental issue of durability, where symptoms of a problem might occur later but still mean that the parts have failed prematurely.

The first report also notes that the car has passed an MOT whilst in Miss D's possession. An MOT is a roadworthiness assessment, and it wouldn't necessarily pick up on parts which are not durable.

Neither report concludes that the damage is caused by reasonably expected wear and tear, misuse or third-party damage. So, I'm not persuaded that these reports evidence that the vehicle was of satisfactory quality at the time it was supplied to Miss D.

Miss D's car has suffered catastrophic engine failure. The exact cause of this hasn't been determined by the engineers employed by Miss D, but both reports confirm that the car is not driveable, and that substantial damage has been caused within the engine.

I've taken into account the comments provided by the dealership that the service completed by Miss D may have led to the fault. I haven't seen any persuasive evidence that this is the case. Both reports obtained by Miss D note that there were low levels of oil in the engine.

But neither report indicates that this is due to a problem with the service carried out. If there were, for example, a loose fitting or evidence of an ongoing oil leak, I would expect this to have been reported on by one or both of the engineers that assessed the car.

There seem to be a number of reasons that the car could have shown low levels of oil at the time of the inspections, including that this could have been caused by the fault itself, rather than being the cause of the fault.

In considering durability I have had regard to the age of the car and the mileage Miss D travelled in it before an issue. But I also note the overall low mileage for the age of the car (less than 40,000 miles at the time of failure) and the good service history, and a relatively significant purchase price to reflect this. All things considered, I don't think the reasonable person would expect the car to have suffered such catastrophic engine failure that results in the need for a new engine. It seems that there was likely an overall issue with the vehicle which has led to a premature failure of parts. The issue doesn't appear to be one of normal wear and tear, nor have I seen any evidence that it was caused by the service, or by driving style or third-party damage.

On the balance of probabilities, I'm persuaded that the car was not reasonably durable, and therefore was not of satisfactory quality at the time of supply.

Having made that finding, I need to decide what, if anything, Oodle should do to put things right. Our investigator has recommended that they repair Miss D's vehicle.

The Consumer Rights Act sets out the remedies available where goods are considered not to be of satisfactory quality and one of the remedies is to allow an opportunity to repair the goods. That repair should be done in a reasonable time, and without significant inconvenience to the consumer.

Miss D has not had use of her vehicle since April 2020. Neither report provided by Miss D has been able to identify the cause of the problem with the car, they are not clear on what is required in order to affect a repair and suggest that dismantling of the engine would be required to reach a conclusion. It's not clear if a repair will be successful, will be long lasting, or how long it might take to complete. So, it's likely that Miss D will be put to significant inconvenience, in addition to that which she's already experienced, in arranging a repair when it's not clear that it will be successful and further work and time might then be required to return the car to a satisfactory state. It would also mean that Miss D has to wait for an unknown period of time before she is able to drive her car again.

All things considered, I don't think Miss D should have to accept repair of the vehicle and should be allowed her final right to reject the car. This would mean the car is collected from Miss D, the finance agreement is brought to an end, and Miss D has her deposit refunded (plus interest).

Miss D's deposit contribution was £8,090.89 including a part exchange. But there was a £6,295.89 settlement for a past agreement. So, the total to be returned to Miss D for the deposit is £1,795.

Miss D has been unable to drive the car at all since April 2020 and hasn't had use of any replacement or courtesy car in the interim. So, I think it's fair that Oodle refund 100% of her monthly payments relating to use of the car from 1 April 2020.

Miss D has paid to have the car inspected at her own cost, and I think these costs should be refunded plus the recovery costs Miss D had to pay for to have the car bought back to her

home address. Miss D has provided evidence that she paid £195 for the first report, £89 for the second report, and £45 to have the car recovered.

Miss D has continued to tax and insure the vehicle and has not had the benefit of these. So, I think it's fair that Oodle should reimburse her for these costs. Miss D's insurance premium for 27/01/20 to 27/01/2021 was £540.13. So, Oodle should refund her £45 for each month she was without the car from the beginning of April 2020 until the date of settlement. Miss D paid £26.25 per month for her car tax, and so Oodle should refund her for these payments from April 2020 until the date of settlement. Both subject to any refund that Miss D may get for cancelling the products.

Our investigator recommended that Oodle pay Miss D £150 compensation for the impact the situation has had on her. Miss D has been put to distress and inconvenience in arranging for inspections, trying to have the situation resolved, and in arranging alternative transport in the meantime. Overall, I'm satisfied that this compensation reflects the distress and inconvenience experienced by Miss D.

Miss D accepted my provisional decision but said that when she had the car towed to her home address after the engine failure, the oil leaked onto the road outside of her house, which is why the oil was low at the time of the inspection. Miss D says she didn't top the oil up because she was unable to drive the car at that point.

Oodle haven't accepted my provisional decision. They've suggested that the low oil level is evidence that the service wasn't carried out correctly, with either the incorrect level of oil or parts not being secured tightly enough. Oodle say there was no evidence of a fault being present or progressing at the time the service was carried out.

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 thought about the points raised by Oodle in response to my provisional decision, but they haven't persuaded me to change my mind. I considered the oil levels and the service in my provisional decision, and I'm satisfied that the low oil level at the time of the inspection was more likely to have been caused by the fault, rather than be the cause of the fault.

I'm persuaded that the car was not reasonably durable, with its parts failing prematurely, for the reasons that I outlined in my provisional decision. Therefore, it was not of satisfactory quality at the time of supply.

My final decision

My final decision is that I uphold this complaint and I require Oodle Financial Services Limited trading as Oodle Car Finance to:

- End the finance agreement and collect the car at no further cost to Miss D
- Refund Miss D's deposit of £1,795.
- Refund 100% of Miss D's monthly rental payments that relate to use of the car from 1 April 2020.
- Refund Miss D £329 for the cost of diagnostic reports and recovery fees.
- Refund Miss D £71.25 per month from April 2020 until the date of settlement for car tax and insurance costs, minus any refund that Miss D receives for these.
- Pay Miss D £150 compensation to reflect the distress and inconvenience caused.
- Remove the finance agreement from Miss D's credit file.

Oodle should pay 8% yearly simple interest on all refunds calculated from the date of payment to the date of settlement.

If Oodle considers that its required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Miss D how much it's taken off. It should also give Miss D 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 D to accept or reject my decision before 18 March 2021.

Zoe Launder
Ombudsman