DRN-3515096

The complaint

Miss S complains that under a hire-purchase agreement, Oodle Financial Services Limited supplied her with a car that wasn't of satisfactory quality. Miss S is assisted in bringing her complaint by her partner ("A").

What happened

On 9 November 2018, Miss S took receipt of a car she'd seen at a dealer ("D") by means of a hire-purchase agreement with Oodle. Under the terms of the hire-purchase agreement, Oodle acquired the car from D and supplied it to Miss S. The agreement states the cash price of the car as £12,359, with Miss S paying £1,000 deposit.

Within 30 days of Miss S taking receipt of the car, A contacted Oodle to report a number of issues with the car. According to Oodle's records, A listed the following problems with the car:

- vibrations through the steering wheel when driving home following collection. A had been advised the vibrations were due to a front-end impact which A didn't think had been repaired through an insurer as nothing showed on an HPI check
- tyres spllt to cord
- where the front bumper meets the wing is glued and cable-tied in place
- passenger headlight brackets broken and lamp not secure
- driver headlight is glued in place and fix has been painted black to disguise
- parking sensors do not work as covered in black paint

A said he'd been advised by Trading Standards to obtain an assessment of necessary remedial work, which indicated a likely cost in the region of £5,500. I understand Oodle was provided with a copy of this assessment.

Later in December 2018, A provided Oodle with details of further problems with the car. A told Oodle they'd tried to reject the car through D and a third party credit broker ("C") without success. Oodle contacted C, who told it that the issues with the car were merely cosmetic, and that while D was willing to repair the car, it had struggled to identify significant defects. C further noted that D had supplied Miss S with a courtesy car. However, A had also reported problems with this vehicle.

In April 2019 Oodle sent an email to Miss S to say that C had told it that repairs had been carried out on the car and that Miss S was now happy with the situation. Oodle didn't receive a response to that email and closed its file. A couple of months later Oodle reopened the file after further contact. At that point C told Oodle that D was trying to sell the car for Miss S, and that they would use the sale proceeds to repay the balance of the finance.

Oodle issued a final response letter to Miss S in August 2019. It set out its view that the problems with the car didn't entitle Miss S to reject it, that repairs were carried out, and that

once the car was sold, the finance would need to be settled. Miss S was dissatisfied with Oodle's response and referred matters to us.

Over the following months, Oodle received several enquiries from third parties in relation to the car, including salvage companies and in respect of HPI checks. The car appears to have been logged as an insurance write-off in August 2019. In March 2020, A expressed concern to Oodle that C was contacting it without authority to make enquiries about the position on the finance. Following this, Oodle received notification from an insurer that the car was the subject of an insurance claim that had been paid to a further third party, another garage.

Our investigator felt A had provided sufficient evidence to support Miss S's claim that the vehicle Oodle supplied to her was not of satisfactory quality. The investigator also noted Oodle hadn't appeared to have done very much in terms of investigating the concerns about the vehicle faults. Miss S had since made arrangements with D to sell the car, with the sale proceeds being used in reduction of the balance of the hire-purchase agreement.

Overall, our investigator considered the fair way to resolve matters would be for Oodle to 'unwind' the hire-purchase agreement, treating it as if it had never been entered into. She proposed that Oodle return the payments Miss S had made towards the agreement, along with her deposit, fees and with interest. She also proposed that any record of the hire-purchase agreement should be removed from Miss S's credit file.

response to our investigator's assessment

Oodle didn't appear to dispute the conclusion that the car was not of satisfactory quality. However, it didn't agree with the proposals suggested in resolution saying, in summary:

- Miss S had use of the vehicle from November 2018 up until the vehicle was given back to the dealer in February 2020. It should be able to make a deduction from any refund to take into account the use she had of the car. C's correspondence suggested this use was between 3-4,000 miles a month.
- From June 2019 C in effect took over the repayments on the agreement by making monthly bank transfers direct to A, who then transferred the money to Oodle. In or around June 2020, C made a payment of £1,474.92 direct to Oodle. And around this time D also made two payments to A totalling £6,000, apparently so that A could clear the finance. Only £3,000 of this was actually forwarded on to Oodle, though the full amount would have been sufficient to pay off the remaining hire-purchase balance. This was only cleared in February 2021 as a result of various payments received over time

Oodle suggested that it would be reasonable to offset the payments Miss S and A had themselves made – which Oodle calculated as six months' payments (a sum of £1,689.66) against the deduction for fair use; in other words, that it wouldn't be refunding the payments. Oodle didn't comment on the investigator's recommendations about refunding the deposit or fees, or amending Miss S's credit file.

A, on the other hand, didn't think the investigator's proposals went far enough, saying:

> *"[The circumstances have] left us with some debt, which we feel has been in direct result of this situation. Not only has this affected us mentally, it has caused great conflict within the relationship. I have had many problems with my travel to work and have had to lose several days' work without pay through not having any transportation. I then have had to take out several rentals. Also as for the mileage accumulation, well we have not had this car in our possession since the end of January 2019 so the mileage can't possibly be from us.*

When the car was first returned to the dealer instead of the dealer fixing the repairs he then used the car for a minimum period of three months for his own Indian takeaway business. We were told this information by C who then took the car into their own possession from the dealer three months after we originally handed it back.

We also know that after this the car has also been sold twice in this period after to which I have evidence of at least one of those sales. After these sales the car had been returned to C as the car had still been deemed faulty by the customer.

Another point I wish to make is at the time of the purchase from ourselves not only did we put down a deposit of £1,000, we also part exchanged our vehicle to the value of £4,500 which we do have the receipt for and need to be suitably compensated for."

As the parties were unable to agree to the investigator's proposals, the dispute has been passed to me for review and determination.

My provisional decision

I recently issued my provisional conclusions setting out the events leading up to this complaint, and how I thought matters should be resolved. I said:

"Oodle supplied the car to Miss S, a consumer, under a hire-purchase agreement, a form of credit-related regulated activity. As such, a complaint relating to that activity is covered by our compulsory jurisdiction, to which Oodle is subject. Hire-purchase agreements entered into by consumers are covered by legislation including the Consumer Credit Act 1974 ("CCA1974") and the Consumer Rights Act 2015 ("CRA2015"), which implies certain terms into the contract to supply the car.

Taking into account when A notified Oodle of the problems with the car, the CRA2015 places the onus on Oodle to demonstrate that the car was of satisfactory quality, taking account of matters such as any description of the car and the price paid. The CRA2015 says that quality of goods includes aspects such as appearance and finish, freedom from minor defects, safety and durability.

Given the description A supplied to Oodle within a month of Miss S taking receipt of the car, there were clearly concerns over whether the car met a number of those tests. A has provided screenshots of correspondence with C during November 2018 that demonstrate Miss S was seeking to reject the car. A also provided Oodle with a third party assessment of the car's condition and remedial work required.

It's apparent from Oodle's own case notes that it has placed a significant amount of reliance on what it was being told by C about the condition of the car, and about the rectification work D was carrying out, possibly more so than it placed on the evidence it had from A. Given the inconsistency with the information Oodle received from C about the car's condition, I question whether Oodle should have so readily accepted what it was being told by C.

At no point does Oodle appear to have sought or obtained any comparable evidence to demonstrate that the car met the requirement that it was of satisfactory quality when supplied to Miss S. The available evidence at that point ought to have suggested to Oodle that it was not.

There is an exception under the CRA2015 that says that the satisfactory quality term doesn't apply where issues are specifically drawn to the consumer's attention, or where the consumer examines the goods, before the contract is made, which that

examination ought to reveal. I've seen no persuasive evidence to suggest that either of these exceptions should apply.

That leads me to think Oodle hasn't discharged its obligation to demonstrate it supplied Miss S with a car that was of satisfactory quality. Based on the evidence I have seen, I find that Oodle supplied Miss S with a car that wasn't of satisfactory quality, which she sought to reject within the 30-day timescale specified in the CRA2015 as the short-term right to reject. The CRA2015 has the effect that in such circumstances Miss S is entitled to treat the contract as at an end, and – without undue delay – to receive a refund of the part of the price paid.

Putting things right

Applying that position in this case has been complicated by the approach taken by the parties involved. C has apparently been liaising with D about repairs, though Miss S and A made clear in December 2018 that they wanted to reject the car. C has also apparently been making payments towards the finance agreement, as has D. The car has been sold – possibly twice – notwithstanding that the party who held title to the car was Oodle.

I make little criticism of Miss S or A in this respect. Oodle's contact notes indicate it was aware that D was intending to sell the car and that the proceeds would be used to repay the finance agreement. Oodle was also prepared to accept that a repair would be an effective remedy, despite Miss S's express rejection. The impression I have gathered from Oodle's contact notes and the surrounding circumstances is that C and D's decision to attempt repair – and later, to sell the car to repay the finance – was made irrespective of Miss S's wishes, and in my view this should not have been treated as being at her request. At best, she and A went along with the actions C and D had decided to take instead of addressing her rights as a consumer.

I recognise that C and D took these actions without involving Oodle. But I'd expect Oodle to have greater knowledge in this field than Miss S. And I think it was incumbent on Oodle to understand the obligations it carried in light of her rejection, the requirement on Miss S to make the car available for collection, and – if appropriate – to make clear any objection it had to the sale arrangements.

I also see from Oodle's notes that there was no little confusion over the way in which the finance was to be settled. There's mention of the car being written off, and an insurance claim in or around March 2020. None of this was based on anything Miss S or A had told Oodle – they've said they no longer had the car from February 2019.

The way Oodle handled these matters suggests to me it didn't have a full understanding of what was, to be fair, a complicated situation. But I am minded to conclude that Oodle ought to have taken a more active role in addressing the claim against it. Because it did not, C and D were able to take actions that appear to me to be some distance from being appropriate and that have made determining suitable resolution more difficult. However, there are some basic principles that I've still been able to take into account when assessing what's fair and reasonable.

Losses under the supply arrangements

Under section 20 of the CRA2015, having exercised her short-term right to reject the car acquired under a hire-purchase agreement, Miss S is entitled to have the contract treated as at an end, and to a refund of the part of the price paid. I accept the premise that this refund should not extend to amounts actually paid by C or D,

whether these were paid directly or through Miss S or A. But I am satisfied that "the part of the price paid" includes not just the payments to Oodle but the part-exchange value of Miss S's original car, the £1,000 deposit and the £50 document fee.

As far as I am able to determine from the sale documents and payment records, the transaction was structured thus:

D originally priced the car at £9,790. Miss S owed £7,359 on existing car finance. D settled that finance on her behalf. D gave a value of £4,500 for Miss S's original car leaving £2,859, which was added to the price of the car D was selling. The parties agreed a final price of £12,359 for that car, as shown on the hire-purchase agreement. Miss S paid £1,000 deposit, giving a balance of £11,359 under the finance Oodle provided. She also paid a £50 document fee, which was not included within the price on the documents and in my view should be kept separate for the purposes of this calculation.

Based on this, Miss S paid D £5,500 in cash and goods at the outset of the agreement. Given her starting position where she owed her existing finance provider £7,359, that leaves a balance of £1,859 that she would always have had to pay. That amount has to be offset against any refund she should receive from Oodle under section 20 of the CRA2015.

According to Oodle's account statements, the total paid to Oodle (from all sources) under the hire-purchase agreement was £13,068.72. The payments made (whether directly to Oodle or via Miss S or A) by C or D total £10,622.90. It follows that the remaining amount – £2,445.82 – represents the sum of payments to Oodle from Miss S's own pocket, rather than the figure of £1,689.66 Oodle suggested.

Purely from the perspective of finance payments, after offsetting the amount Miss S was originally due to pay, as a result of entering into the hire purchase agreement she is £586.82 worse off. Oodle should refund this amount to Miss S, along with the £50 document fee previously mentioned, together with interest.

I've thought carefully about Oodle's suggestion that it should be entitled to make a deduction from this refund in recognition of the use Miss S made of the car. Under the CRA2015, where a consumer exercises a final right to reject goods such a deduction is permitted. However, there's no such provision in relation to a consumer exercising their short-term right to reject, as I'm satisfied Miss S did (or attempted to do) here. Further, the extent to which any use Miss S was able to make of the car over the couple of months in which it was in her possession is offset by the problems cited in evidence that she experienced in doing so. Taking these factors into account, I don't propose to find it would be reasonable to make a deduction in this respect.

Additional loss or damage

The finance costs, however, aren't the only losses Miss S and A claim to have incurred as a result of being supplied with the faulty car. Instead of being able to use the car as intended, on at least one occasion Miss S had to hire an alternative vehicle at her own expense. She has provided an invoice for this, indicating a cost of approximately £90. And while I don't consider the cost of insuring the alternative car D provided to be an additional cost that would be reasonable to award, I don't doubt the fact that car appears not to have been road legal and that the tax was cancelled and the vehicle clamped led to further costs for day to day travel.

Under section 19 (sub-sections 10 and 11) of the CRA2015, Miss S would be entitled to claim damages in respect of these additional out of pocket costs. It doesn't automatically follow that a court would award them, but based on what I've seen there's a fair chance it would do so. With this in mind, I propose that in addition to the refund I've already calculated, Oodle should pay Miss S £250 as a fair sum in recognition of her additional costs arising from the supply of the faulty car.

Distress and/or inconvenience caused to Miss S due to Oodle's handling of matters

In law, while there are some exceptions the agreement to supply a vehicle doesn't generally mean a contract-breaker is liable for things like distress or frustration that the other party to the contract might experience due to its actions. But our rules don't limit me to making awards that might otherwise be made by a court. Where I consider it appropriate to do so, I can require a firm to pay compensation for the impact its actions in carrying on a financial activity have had on a complainant.

Here, the financial activity involved supplying the car to Miss S under a hire-purchase agreement, and dealing with the attendant responsibilities of doing so. I don't think it would be fair to say that Oodle should compensate Miss S for the distress that would arise from the fact the car was faulty. But as I've mentioned above, I do think the way Oodle handled the situation once Miss S attempted to raise her claim fell short of what I would deem satisfactory.

In my view Oodle placed an inappropriate amount of weight on what C was telling it, and insufficient weight on what Miss S said. Oodle ought to have established the true condition of the car, and there seems little reason to find that had it done so, it would have concluded the car was anything other than unsatisfactory, at a very early stage of the process. Oodle's approach to the claim was likely to exacerbate the distress and worry Miss S was already experiencing. To recognise this impact, I propose that Oodle pays Miss S £600. There's further information on our website about how we assess suitable compensation."

I didn't propose that Oodle amend any information it recorded on Miss S's credit file in relation to the hire-purchase agreement, as it appeared to me an accurate reflection of the way the account operated and not in any way detrimental to Miss S.

I invited both parties to let me have any further comments they wished to make in response to my provisional decision.

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.

Response to my provisional decision

A replied on behalf of Miss S to say that they were broadly happy with the proposed resolution, although they felt the level of distress and inconvenience experienced might have warranted a higher award. Oodle didn't offer any further evidence or arguments in response to my provisional findings.

I understand A and Miss S's strength of feeling here. However, it's important to draw a distinction between the award I've proposed for the distress and inconvenience arising from Oodle's actions, and that which they've experienced as a result of the actions of other

parties, such as C and D. I can't fairly expect Oodle to take responsibility for everything that happened, and I trust A and Miss S will understand why I've proposed this award.

Overall, I've no reason to reach a different conclusion from the one I proposed in my provisional decision. For the reasons I set out, I'm satisfied it's a fair and reasonable way to resolve this dispute.

My final decision

My final decision is that in order to settle Miss S's complaint, Oodle Financial Services Limited must now take the following steps:

1. pay Miss S £636.82 as a refund of the money she paid towards the hire-purchase agreement after deducting the balance she would otherwise have had to pay her existing finance provider, and the document fees she paid

2. pay interest on the sum in 1. calculated at 8% simple per year, from 1 February 2021 (being the date on which Miss S made her final payments to Oodle) until the date it pays this settlement. If Oodle deducts tax from this interest, it should provide Miss S with an appropriate tax certificate

3. pay Miss S £250 to reflect her alternative travel costs due to the supply of the faulty car

4. pay Miss S £600 in recognition of her distress and inconvenience caused by its handling of matters

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 27 June 2022.

Niall Taylor
Ombudsman