

The complaint

Ms D complains that Oodle Financial Services Limited refused to let her reject a faulty car.

What happened

In November 2019 Ms D acquired a second-hand car costing £12,100. It was funded by a deposit of £100 and the balance by a hire purchase agreement with Oodle. The car was some four years old and had covered 72,295 miles.

In the summer of 2021 Ms D encountered problems with the car and took it to a garage for a diagnostic. This identified that the fuel injector 2 was blowing past its copper sealing washer. She was told that this issue was not uncommon in this make and model. The failure allows carbon to build up and this leads to contamination of the engine oil such that a new engine would be required.

It was suggested that the copper injector seal had failed. The garage advised that the manufacturer had since switched to zinc washer seals to avoid such problems. Oodle said it required an independent report and Ms D commissioned one in November 2021. The report states:

“The leaking compression/fuel had contaminated the engine oil resulting in poor lubricant quality, which has damaged vital engine components such as crankshaft bearings and possibly pistons requiring a replacement engine unit.

The cause of failure is the injector copper sealing washer, which the manufacturer has now changed the material it is made from to Zinc.

The copper washer was leaking for an unknown period of time before its total failure occurred suddenly.

This was caused by a material defect.

The owner has completed the maintenance of the vehicle in compliance with the manufacturers recommend intervals and could not have contributed to this failure. The warranty company have rejected the claim due to carbon, but the carbon build up was as a result of the injector seal failing being the cause of failure.

If inspected the engineer would have come up with the same conclusion due to it being a known issue by the manufacturer”.

Oodle said that as the inspector had not confirmed the dealer would be liable for the fault it rejected her request to reject the car.

Ms B brought her complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. He noted Ms D had been able to cover 18,000 miles before the car failed. He also said that there was no evidence to support the suggestion that there was an issue with the copper washers. He said there had been a

recall for this model in 2018 for issues with the potential tightness of the injectors but not the material. Overall he thought the failure was due to wear and tear. Ms D didn't agree.

I issued a provisional decision as follows:

I explained that in considering what is fair and reasonable, I needed to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The finance agreement, that is the hire purchase agreement, in this case is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. Oodle is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The relevant law says that under a contract to supply goods, there is an implied term that *"the quality of the goods is satisfactory"*.

The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and the mileage at the time of sale and the vehicle's history.

Under the relevant law the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

I noted it wasn't disputed that the engine had failed, but the question was whether the fault was present or developing at the point of sale. The garage to which Ms D took the car has said that the copper washer was known to fail and this was the cause of the engine needing to be replaced.

I said this was endorsed by the independent engineer who said:

"In the engineer's opinion being based on evidence written, reported and observed during this assessment of the above defect/s, the following can be concluded:

The issue seen is not uncommon which can cause extensive engine damage.

The cause of carbon build up seen around No.2 fuel injector was caused by the components copper sealing washer initially leaking compression from the engine."

Like our investigator I had looked at a number of websites and I noted that there are quite a few referring to this as a known problem with this particular manufacturer and this model. A number refer to the need to replace the washer at the 75,000-mile service. And there is a suggestion that the manufacturer has endorsed this, but I have not identified official confirmation of that requirement.

I noted Ms D has said the car had a full-service history and she had services carried in June 2020 and May 2021. This would suggest that the prior service at which one might expect the washer to have been replaced had been done prior to her acquiring the car. That would mean that the car would have been sold with a washer that was in danger of failing.

I appreciated Ms D was able to drive the car for some 18,000 miles over some 18 months and on one level one might conclude that the failure was due to wear and tear. However, I consider that the washer was subject to failure and so I think it reasonable to conclude that this was an inherent fault.

In short we have two engineers who have concluded that the washer was likely to be defective and to fail at some point. The fact it took 18 months does not mean that one can say that the fault was the result of wear and tear. As such I said I was minded to uphold this complaint subject to any further evidence which may be provided.

Oodle responded to say that the fault had not been brought to their attention until almost two years after the point of sale and the car had covered an additional 18,000 miles. It said that Ms D had possession of the car at 75,000 miles and so it was unfair to pass the liability to the seller. It added there had been no official safety recall. Ms D did not respond.

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 have taken note of the business' response, but after due consideration I have concluded that my provisional decision should stand.

Standing back from the detail of the issue with the washer one has to say that it is unusual for a car only some five years old and having covered a little over 90,000 miles should suffer a catastrophic failure which required the engine to be replaced. I agree that the car will have suffered from wear and tear, but having a known possible faulty component which had not been replaced led to that failure.

The car had covered 72,295 miles at the point of sale and I am satisfied that at that point the washers would have needed replacing. The car was due to be serviced at 75,000 miles and given Ms D had it serviced in June 2020 would indicate that the car which had a full-service history had one carried out before the point of sale. I believe it reasonable to have expected that washer to have been replaced as it was a known issue.

Overall I consider the car was not fit for purpose at the point of sale as set out in my provisional decision and so it should be rejected.

Putting things right

Ms D should be allowed to reject the car.

My final decision

My final decision is that I uphold this complaint and I direct Oodle to:

- allow Ms D to reject the car
- end the agreement with nothing further to pay
- refund any payments made by Ms D after the car failed returned to her plus annual interest at 8% simple from the date paid until repaid
- refund her deposit of £100 plus annual simple interest at 8% from the date paid until repaid

- refund the cost of the independent report plus annual simple interest at 8% from the date paid until repaid
- pay her compensation of £200 for any distress and inconvenience she has suffered and
- remove any adverse entries it may have made on her credit file in relation to this agreement

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 12 October 2022.

Ivor Graham
Ombudsman