

## The complaint

Mr M complains that a car he acquired with finance provided by Oodle Financial Services Limited was mis-sold and of unsatisfactory quality.

## What happened

Mr M acquired this car under a hire purchase agreement (HPA) from Oodle dated 15 July 2021. On (or very shortly after) collection he reported a number of issues and the supplying dealer agreed to undertake some repairs. Mr M remained unhappy and he contacted Oodle, in early September, asking to reject the car.

Mr M considers the car was mis-sold and is of unsatisfactory quality. Among other things, he refers to faulty and damaged parts, warning lights and being told the car has four-wheel drive when it doesn't. He thinks the car has several modifications - including changes to the air intake system and suspension – that adversely affect day to day driving and invalidate a warranty he got with the vehicle.

The supplying dealer told Oodle that various issues with tyres and bodywork were resolved, at no cost to Mr M - and other parts were within MOT standards. The dealer denied misrepresentations were made and said registration documents show the car is front wheel drive - and it doesn't have any badges or other identifying marks to suggest otherwise. The dealer accepted front suspension springs were not to the manufacturer's specification and offered to refit to resolve this.

Oodle thought the car had been advertised accurately as the *suspension* was to the manufacturer's specification albeit the coils aren't. Oodle acknowledged this should have been made clear in the advertisement but didn't think it was likely to have influenced Mr M's decision to acquire the car. And it was satisfied that Mr M had the chance to inspect, the car had obviously been lowered and the invoice says he accepted modifications present.

Mr M thought this was unfair and he should be allowed to reject the car and receive a refund - or he was willing to keep the vehicle if Oodle would provide a warranty and pay for repairs. He contacted Oodle again and (near the end of October 2021) Oodle offered to pay £300 compensation for distress and inconvenience and appoint independent expert to inspect. Mr M agreed, then Oodle told him the supplying dealer had offered to take the car back - as a goodwill gesture. Oodle said it would pay for collection and the deposit would be refunded with a deduction of 25p a mile for use.

The car was due to be collected in mid-November 2021 but Mr M contacted Oodle, the day before, to say he needed more time to source a new car. Oodle gave Mr M a day to decide if he wanted to reject or not and Mr M thought this was unreasonable. He said it didn't give him enough time to get a replacement and he needed transport to attend a family funeral in another part of the country. Oodle agreed to postpone collection for a short time in the circumstances but Mr M still felt rushed and wanted more time. Oodle considered it had done enough to resolve the matter, there wasn't enough evidence to show the car was misrepresented or of unsatisfactory quality and, as Mr M didn't accept the goodwill offer, it shouldn't have to do anything else.

The offer to take the car back was withdrawn and Mr M referred the matter to our service. Our investigator didn't recommend the complaint should be upheld. She couldn't see any reference to the car being four wheel drive in the relevant paperwork. And she didn't think

there was enough evidence to show the car was misrepresented. She was satisfied that Mr M had enough information to check if this was the model he wanted. And the advertisement refers to 'sport' suspension as a factory-fitted extra so he should have realised this would be different to a standard model. In addition the invoice notes that he was happy with any obvious modifications.

The investigator acknowledged front springs weren't to the manufacturer's specification but she's not persuaded this means the car was of unsatisfactory quality. She had no evidence to show that the warranty was invalidated by the changes and she considered the repairs the dealer arranged and paid for were fair and carried out to a reasonable standard. On balance, the investigator wasn't persuaded that any significant quality issues remain or that Oodle had treated Mr M unfairly. She found the offer to take the car back was fair and the timescale for collection wasn't unreasonable and she didn't think Oodle should have to do anything else.

Mr M asked for an ombudsman to review the matter. He felt the investigator had taken Oodle's side and he had the car checked by a local main dealer and sent us a vehicle health check (VHC). This confirms the car was modified and he feels strongly that it was mis-sold.

Having considered the available evidence, I was minded to uphold this complaint. I thought it was fair to give the parties the chance to see my provisional findings (and make further submissions if they wanted to) before I made my final decision so I issued a provisional decision on 8 September 2022. I've set out below what I decided provisionally - and why. This forms part of my final decision.

### **My provisional decision**

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.*

*Both parties have provided a good deal of evidence here and made fairly detailed submissions so I'm going to have to summarise things in my decision. The rules of our service allow me to do this. And I want to assure both parties, if I don't mention every single point that's been raised, it's not because I haven't thought about it. I have considered everything that's been said and sent to us. However, I'm going to concentrate on what I consider is key to reaching a fair and reasonable outcome.*

*I should make it clear at the start that the Financial Ombudsman Service provides alternative dispute resolution that's free to complainants. But, I'm not a regulator. I don't have the power to tell Oodle how to operate on a day to day basis and it's not within my remit to punish a financial business or any individual. My job here is to look at all of the information available about this particular complaint, without taking sides, and consider the merits on a fair and reasonable basis.*

*Oodle supplied this car to Mr M under a HPA and it was obliged, under the Consumer Rights Act 2015 (CRA), to ensure (amongst other things) that the car was as described and of satisfactory quality at the point of supply.*

*What amounts to "satisfactory" quality will vary depending on individual circumstances. The quality of goods includes their general state and condition as well as other things like fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability. And goods need to meet the standard that a reasonable person would consider "satisfactory". In the case of a used car, it is generally considered reasonable to take the age, cost and mileage at the point of supply into account.*

*The car Mr M got here was around two years old with just under 19,000 miles on the clock and cost over £30,000. Mr M paid a cash deposit of £8,200 and borrowed the rest under the*

HPA agreeing to repay the finance in 60 monthly instalments of just over £500. I think a reasonable person would accept that a car like this was likely to have some parts that were worn and would need replacing or repairing sooner or later – which is reflected in the lower price paid compared to the price of a brand new vehicle.

I can see that Mr M raised a number of issues regarding the quality of the car generally. But, in view of my findings below, I don't think I need to comment any further on those here. I say this because I think the crux of Mr M's complaint is really two-fold. First, he says he wanted a four wheel drive model so he asked the salesman about this specifically and he was told that it was four wheel drive when it's not. Second, he's unhappy because he discovered the car was modified in a number of ways that he wasn't told about and weren't obvious at the point of sale. In particular, Mr M considers the car was not "as advertised", in that, the suspension is not factory fitted "S" line – it was lowered after manufacture.

I'm satisfied that this car should have been described accurately (under the CRA) and I can consider any representations made during the course of pre-sale negotiations in this complaint against Oodle, under section 56 of the Consumer Credit Act 1974. For me to find there had been a misrepresentation here, I'd need to be satisfied that the dealer probably told Mr M something that wasn't true and that untrue statement induced him to take out this HPA.

I can't be certain what was said when Mr M agreed to acquire the car. I've considered the relevant paperwork (including the advert) and I've seen nothing to suggest that the car had four wheel drive. I realise this is frustrating for Mr M, who says his partner was present when he was told this as well. But, I can't rule out the possibility there may have been some misunderstanding about this at the time. And, on balance, I don't have enough evidence to find that this feature of the vehicle was mis-represented.

I don't think there's any dispute however that the car was modified. Oodle seems to accept that the suspension contains "aftermarket" springs that lower the car below the level of the manufacturer's factory fitted "sport" suspension. And Mr M had the car checked by a main dealer (that I'll call A) for this brand who confirmed (when I spoke to them) that the car's dump valve, exhaust and suspension springs have been all modified after manufacture and wheel spacers were also fitted.

I have seen some correspondence from the dealer that suggests Mr M wanted a modified car and I accept the invoice (addressed to the credit broker) has a note on that says "Customer viewed and test driven vehicle and is happy with modifications including vinyl decals. Modifications include, Front splitter, Side skirts, Remus back box, Windscreen sun strip, Customer to return for front splitter replacement". However, I can't see any reference to modified springs or suspension in either the invoice or the advertisement.

I'm satisfied the advert says the car has factory fitted "S" (or sport) suspension. And, given the front springs were changed after manufacture to lower this, I don't think that can be accurate. The dealer refers to a general disclaimer as regards accuracy included the advert. But, I'm not persuaded that's reasonable. It seems to refer to information just above - which relates to insurance and the like - not the car's specification. And, in any event, it's difficult to see how "best efforts" were made to ensure that this information was correct on the facts here.

I accept it would have been obvious to any prospective purchaser that this car had some modifications present. The items listed on the invoice would probably have been visible to even the untrained eye. And I don't think Mr M disputes that he was aware of these changes. I'm not persuaded however that it's reasonable to suggest that a consumer is deemed to accept all modifications present just because he's aware of some.

I'm satisfied (from speaking to A) that it's unlikely Mr M (or any other untrained person) would have realised the full extent of the modifications to the suspension here without a detailed inspection. I'm not satisfied Mr M should reasonably have been aware that this car

*had anything other than factory fitted suspension. And I think it's reasonable to conclude that this car was mis-described at the point of supply - in that the suspension was not what a reasonable person would expect given the wording of the advertisement. I don't think it was unreasonable of Mr M to rely on that information, in this situation. And I've gone on to consider whether this incorrect information is likely to have influenced his decision to acquire this particular car.*

*Mr M lives in a large city and I think he would probably have been wary of accepting a car with particularly low suspension like this one. He told us he noticed the suspension wasn't right almost as soon as he got the car home. He found it didn't clear speed bumps cleanly and asked a local mechanic to take a look. The mechanic pointed out the modifications to the suspension, among other things. I've seen an email that Mr M sent to the dealer at the very start of August 2021 where he refers to obtaining evidence from his mechanic about the suspension issue. I think Mr M's actions at the time seem consistent with his being unaware of the modified suspension at the point of sale. I find it understandable he was most unhappy when he found out about that - and he's worried about the impact going forward.*

*On balance, I think it's more likely than not Mr M would not have accepted this particular car if he hadn't believed the suspension was the manufacturer's standard factory fitted "S" line. I can see the dealer has offered to replace the modified springs but I'm not persuaded that's fair in all of the circumstances. I'm satisfied the dealer has already had one opportunity to repair the car. And, given the time that's passed especially, I'm inclined to find it fair and reasonable for Mr M to be put back in the position he would have been in if the car hadn't been misrepresented (so far as that's reasonably possible). I'm minded therefore to find it is fair and reasonable for Mr M to be allowed to reject the car now and receive a refund.*

*For the reasons I've given, I'm inclined to require Oodle to end the HPA and arrange for the car to be collected – at no additional cost to Mr M. It looks as if Mr M paid a deposit of £8,200 which should be refunded. He doesn't seem to have been charged for the VHC (if I'm wrong about that Mr M should let me know in response to this provisional decision). And, as far as I can tell, he seems to have been able to drive the car for the most part. I think it is reasonable for Oodle to retain the monthly payments made while Mr G had the use of the car. I'm satisfied however that Mr M's use of the car has probably been impaired due to the abnormally low suspension and I think Oodle should refund 10% of each monthly payment made towards the finance to reflect that.*

*I consider Oodle should also pay interest on all refunds and, if it has recorded any adverse information about the finance against Mr M's credit file, this should be removed. I think Mr M has probably experienced some distress and inconvenience as a result of being supplied with this car. I have thought about what happened carefully and I am minded to find the £300 compensation Oodle offered in October 2021 seems fair. I consider Oodle should pay Mr M £300 compensation for associated trouble and upset - if it hasn't done so already.*

### **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 invited the parties to let me have any further comments and or new information by 23 September 2022. And I explained that I'd review all the evidence available after that and make my final decision.

I thank both parties for their responses. Mr M is happy with most of my provisional findings but feels he should receive a bigger refund. And Oodle accepted my provisional conclusions but asked to be allowed to collect the car and inspect for damage before agreeing to return the deposit.

I've thought carefully about Mr M's comments. He acknowledges he had some use of the car but says he's only driven it about 5,500 miles and he's kept it in very good condition. He thinks a 10% refund means he'll only get about £730 back - when he had to put up with a car that was unfit for purpose for months, which caused a great deal of stress and financial hardship, yet he never missed a payment. He says Oodle offered previously to charge 25p a mile for use - which would increase the refund significantly – although he acknowledges it may not be possible to reinstate that offer. He considers a fair resolution all round would be to charge the lease rate (for this model) of about £330 a month for the time he had the car.

I understand Mr M feels strongly that he should have a bigger refund here. For the reasons I've given already, I'm satisfied the car was mis-sold and I remain of the view it's fair that Mr M should be allowed to reject now. I think it's fair however to take into account the passage of time and the use Mr M had of the vehicle. I note what he says about the relatively low miles accrued - but I can't reasonably exclude that fact that the car was able to be driven throughout. I accept Mr M's use probably was impaired somewhat due to issues present at the point of supply and it's reasonable he should be compensated for that. It's not open to me however to require Oodle to reinstate the offer made previously - at a time when Mr M only had the car for a few months and had likely accumulated significantly lower mileage.

I've considered what Mr M says about the lease rate but I'm afraid that's a different sort of agreement to the HPA he took out with Oodle. Among other things, lease repayments are calculated and structured differently and, generally speaking, any advance payment wouldn't be refunded in the same way as the deposit here. Working out what's fair in this situation isn't a scientific exercise. Taking everything into account, I remain of the view that a refund of 10% of each monthly payment made is reasonable overall to reflect Mr M's impaired use.

I realise Mr M may still feel this is unfair, in light of everything he and his family have been through. He told us his partner, in particular, was very concerned and stressed when driving this car. I understand that must have been upsetting but I'm unable to compensate any family members direct. Mr M alone is Oodle's customer here and I remain of the view that £300 is fair and reasonable compensation for the distress and inconvenience he experienced.

Finally, I've given some thought to Oodle's comments as well. Mr M told us the car is in very good condition so, hopefully, damage shouldn't be an issue. In the event this is a problem however, I think that would fall to be dealt with under the terms and conditions of the HPA. And I'd remind the parties that the relevant obligations are not altered by my conclusions here.

### **My final decision**

For the reasons I've set out above, my decision is I uphold this complaint and I require Oodle Financial Services Limited to:-

1. end the HPA and arrange to take the car at no additional cost to Mr M;
2. refund the deposit paid plus 10% of each monthly payment made towards the finance;'
3. pay interest on the above refunds at 8% a year simple from the date of payment to the date of settlement;
4. pay Mr M £300 compensation for distress and inconvenience (if it hasn't done so already); and
5. remove any adverse information recorded about the HPA from Mr M's credit file.

If Oodle does not pay the compensation for inconvenience and distress within 28 days of the

date on which we tell it that Mr M accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

If Oodle considers it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr M how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 October 2022.

Claire Jackson  
**Ombudsman**