

The complaint

Miss H complains about a used car she acquired through a credit agreement with Oodle Financial Services Limited trading as Oodle Car Finance (Oodle). The car caught fire while Miss H was driving it and before the fire could be extinguished significant damage was caused to the car.

What happened

The background to this complaint was set out in my provisional decision of 19 January 2023. I have summarised the circumstances of the complaint, along with my provisional findings below.

Miss H acquired a used car through Oodle in March 2021. The car was approximately five years old and had at that time travelled 55,825 miles. I understand that Miss H borrowed £8,762 from Oodle, £6,737 of which was used towards the cost of the new car and £2,025 was used to settle outstanding finance on the car Miss H was part exchanging. The vehicle invoice from the time the credit was taken out refers to a £740 cash deposit, which I believe was paid by Miss H and a £4,168 part exchange value for Miss H's previous car. The settlement amount required to clear Miss H's previous finance was shown to be £6,933. I note the finance agreement shows £0 deposit and £2,025 required to settle the part exchanged finance agreement. But without any further clarification and supporting evidence, I think it likely Miss H did pay £740 as a deposit.

Shortly after Miss H acquired the car, in April 2021, repairs were carried out to the car and the turbo was replaced. Work associated with the turbo replacement was done around that time and I understand this also includes replacing the turbo heat shield.

Around 15 months later, in early July 2022, Miss H was driving the car and after noticing the smell of burning, smoke could be seen coming from the bonnet. Miss H managed to drive the car home and the CCTV camera from the property shows Miss H parked the car outside the front of the house, with her and a friend quickly exiting the car and running inside. The car at that time can be seen with smoke coming from underneath the bonnet.

A second CCTV footage of around 5 minutes later shows the car still smoking, flames can be seen and the fire service then arrive. The fire is quickly extinguished, and this is shown in the footage.

The damage to the car was substantial and I'll refer to this again shortly. Miss H has provided a copy of a letter from her insurance company and the letter explains, in summary, that her insurance policy will not cover her for the damage caused by the fire.

Miss H complained to Oodle about the quality of the car as she does not believe the car should have caught fire. Miss H is essentially arguing that the car was not of satisfactory quality, as set out in the Consumer Rights Act 2015 (CRA), and as the supplier of the car Oodle is responsible for the position Miss H now finds herself in.

The parties have provided independent reports relating to the fire and the possible cause of

fire. The fire service Incident Report sets out, amongst other things:

'8.1 Main cause of fire: Fault in equipment or appliance

8.4 Source of ignition: Electricity supply – Wiring, cabling, plugs

10.4 Notes, general Owner had driven back from work with a smell of electrical burning in the car. Parked on path outside own property [property address]. Signs of heat and flame in engine and called Fire Service. On arrival engine fully involved and cracked windscreen. Advised owner to contact insurance for recovery.'

A report for the car insurance company is dated 15 July 2022 and refers to, amongst other things:

'The vehicle has suffered heavy fire (cause unknown) to the front engine bay.'

'We suggest that it would not be practical to consider cost effective temporary repairs on this occasion to make the vehicle roadworthy'.

The report also includes a number of photographs, showing the substantial damage to the engine bay and exterior of the front of the car. The repair costs are estimated to be in excess of £24,154.

A report commissioned for Oodle, by a company I will refer to as S, was produced on 3 August 2022. Along with a number of photographs showing damage and other parts of the vehicle, the report refers to:

'The engine bay was damaged heavily by fire, which appeared to have emanated from under the bonnet, the heat signature suggests this started just rear of the cylinder head area.

The damage was such that it was not possible to confirm the source of the fire, however, it was noted that the turbo heat shield had a number of bolts missing. When questioned, the driver advised that he did not know of any work which had been carried out recently.

There was no evidence of any external combustion materials under the bonnet, and there was no evidence of external fire entering the engine bay.

The cause is not clear, and there was no evidence to confirm a source of ignition etc. It is unclear why the turbo unit heat shield bolts were missing, but this would not be as a result of the fire damage.

CONCLUSIONS.

Our opinion, being based on a physical assessment, written and verbal information supplied, observations made by the engineer and our previous experience:

The vehicles overall physical condition does not give any cause for concern and the fact vehicle pass an MOT in and around the date of purchase with us to conclusion that the vehicle was road legal met minimum MOT standards at that point.

Although it is impossible to say exactly what caused the fire in the engine bay, there

was no evidence to suggest that it was caused by an underlying condition that was present at point of sale, with the most likely cause being an electrical fire such as short-circuit in the engine bay wiring loom as engine vibrations can cause the wiring loom to wear away, resulting in an electrical fault. It is also possible that one of the engine control modules has short-circuited, again this would have occurred as a result of normal in-service vibrations.'

Oodle did not uphold Miss H's complaint and referred to the inspection report by S. It notes the report did not show that the faults were present or developing at the point of sale and enough to render the vehicle as unsatisfactory quality. Oodle believes the issues have been caused by general wear and tear. Oodle refers to the car having travelled approximately 17,000 miles since Miss H took possession of the car, up to the most recent MOT on 1 April 2022. Oodle believe this supports its view that the issues with the car would not have been present or developing at the point the car was supplied.

Although Oodle did not consider it was responsible for the damage or resulting repairs, as a 'gesture of goodwill' it said it would be willing to contribute to these costs up to the value of £500.

Miss H did not accept the offer from Oodle and referred her complaint to our service, where it was considered by one of our investigators. In summary, the investigator felt there was enough evidence to show that the car was not of satisfactory quality at the time it was supplied to Miss H. This was because of the repairs carried out to the turbo very shortly after the car was supplied. The investigator found that it was probable that the fire was caused by the loose turbo heat shield that had been referred to in S's report. The missing bolts had likely caused the engine bay to overheat and then catch fire. Ultimately, the repairs to the turbo shortly after the car was supplied were inadequate and it was this poor repair that caused the fire. The investigator then set out what they thought Oodle should do to put things right and compensate Miss H.

Miss H accepted the investigator's findings but as Oodle had not responded in sufficient time, the investigator arranged for the complaint to be passed to an ombudsman so a final decision could be issued. Oodle did then respond to say that it did not accept the investigator's findings, but it did not provide any further detail or reasoning as to why it disagreed.

As the complaint could not be resolved informally it was referred to me so that a decision can be issued as part of the final stage of our process.

What I've provisionally 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. In cases when it is not clear what happened or where the evidence is incomplete or inconclusive, I base 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.

As referred to above, I am minded to conclude that there is sufficient evidence to uphold Miss H's complaint and I have set out below why I have come to this decision.

Firstly, it is important to point out that we're an informal dispute resolution service, set up as a free alternative to the courts for consumers. I'm very aware that I have summarised in much less detail what has been submitted by the parties in this complaint. In deciding this complaint I've focused on what I consider to be the heart of the matter rather than commenting on every issue or point made in turn. This isn't intended as a discourtesy to

Miss H or Oodle but reflects the informal nature of our service, its remit and my role in it.

Miss H acquired the used car through a hire purchase agreement with Oodle. The credit agreement with Oodle is a regulated consumer credit agreement and because of that our service is able to consider complaints about the agreement. As the provider of the credit agreement Oodle is also the supplier of the car to Miss H. As the supplier of the car Oodle is responsible for the quality of the car and the CRA implies terms into to the credit agreement requiring the car to be of satisfactory quality.

Section 9 of the CRA refers to satisfactory quality and notes that the quality of goods includes their state and condition. It goes on to list the following aspects, amongst others, of the quality of goods,

- (a) fitness for all the purposes for which goods of that kind are usually supplied;*
- (b) appearance and finish;*
- (c) freedom from minor defects;*
- (d) safety;*
- (e) durability.*

The car that Miss H acquired cost around £7,000, was around five years old and had travelled over 55,825 miles. When considering a car of this age and mileage it would in my view not be unreasonable to expect it to be showing signs of wear and tear and not be in the same 'as new' condition that it would have been in when first manufactured. This will be in relation to the mechanical components and its cosmetic appearance. The price Miss H paid for the car was considerably cheaper than the cost of the car new, and this is to take into account the general condition, mileage and wear and tear the car had experienced since first being manufactured.

Although I would expect a car of this age and mileage to show signs of wear and tear and require some general maintenance and upkeep, it would not however be reasonable to supply the car to Miss H with existing defects that go beyond fair wear and tear, unless these were clearly pointed out before agreeing to acquire the car. The key considerations in my view here are around whether there is sufficient evidence to demonstrate the car is, or was, defective and if so, whether it was defective at the time it was supplied to Miss H. And then, if the car was defective, does that defect result in the car being not of satisfactory quality when considering the broader circumstances and condition of the car, and the CRA. And finally, was the fire related to issues that have caused the car to be not of satisfactory quality.

Were the repairs to the turbo linked to the cause of fire?

Miss H acquired the car in March 2021 and the turbo, along with associated work, was replaced in April 2021. The turbo is a key component within the engine and is not a serviceable item, such as brakes and tyres for example, that Miss H might have expected to have replaced now the car was around five years old and had travelled over 55,000 miles. The fact that the turbo needed to be replaced is in my view clear evidence that it was defective. Considering how quickly the turbo needed replacing after Miss H acquired the car, I think it more likely than not that it was defective at the time Miss H acquired the car. And supplying the car to Miss H with a defective turbo is in my view sufficient to conclude the car was not of satisfactory quality when it was supplied to Miss H.

I have not seen any evidence to suggest that the replaced turbo, with associated parts, needed any follow up work. Nor is there anything to indicate that the replaced turbo failed to resolve the issue at the time. I don't believe there was any additional work required prior to the fire in July 2022, around 15 months later. Putting the fire aside for one moment, it does

therefore appear that although the car was not of satisfactory quality when supplied to Miss H, it was repaired without charge to Miss H and with little inconvenience at the time. If Miss H had further problems with the turbo, or turbo heat shield, then it is possible that Oodle may have been responsible for those subsequent repairs. Especially if those repairs were required because of the missing bolts that were identified in S's inspection.

The report finds the bolts are unlikely to be missing as a result of the fire. Assuming Miss H had no further work carried out to the turbo or turbo heat shield, it is likely that the bolts were not sufficiently tightened when the heat shield was replaced. If that was the case then I would consider this to be a poor or inadequate repair, which Oodle could be responsible for. The investigator found that the fire was likely caused by the defective or substandard repairs to the turbo and as the turbo was not repaired correctly, Oodle would therefore be responsible for the resulting fire. I am not however persuaded that the evidence does indicate, on the balance of probabilities, that the fire was the result of poor or substandard repairs to the turbo and/or turbo heat shield.

I think it would be helpful to remind the parties here that there is no conclusive evidence identifying the cause of the fire. This is not uncommon in fires as the damage caused by the fire often makes it impossible to say with absolute certainty how the fire started. The inspection report from S refers to the turbo heat shield bolts being missing. As already noted above, I accept it is possible that the bolts were not sufficiently tightened when the turbo and heat shield were replaced and over time the bolts have come loose and fell out.

Although bolts are missing, the turbo heat shield was still in place. I also accept that with missing bolts the heat shield may have been loose and not positioned correctly. And if that was the case it would not be 100% effective and would likely allow more heat from the turbo to escape into the engine compartment. But the heat shield is I understand vented and is therefore intended to allow some heat to escape from the turbo, which will be dispersed throughout the engine compartment. I think it unlikely that the heat shield being potentially loose through having missing bolts would result in such a significant increase in heat escaping that would then result in other components within the engine compartment catching fire.

The photographs showing the damage caused to the car bonnet also suggest that the heat was most intense towards the rear of the engine compartment. This suggests the fire may have started towards the rear of the engine compartment and I note the report from S supports this. As set out above, the report states:

'The engine bay was damaged heavily by fire, which appeared to have emanated from under the bonnet, the heat signature suggests this started just rear of the cylinder head area'

I understand that the turbo and therefore turbo heat shield is located at the front of the engine compartment, rather than the rear, or the 'rear of the cylinder head' as referred to in the report.

I think it's also worth noting that there is no independent evidence from any of the qualified individuals who have actually seen and inspected the car that refer to the loose turbo heat shield being the likely cause of the fire. The report from S does note the missing bolts but only indicates it is unlikely the bolts were missing as a result of the fire. There is no suggestion that the missing bolts caused, contributed to, or accelerated the fire. Furthermore, the report from S does actually propose the 'most likely' cause of the fire and believes this to be:

'...an electrical fire such as short-circuit in the engine bay wiring loom as engine

vibrations can cause the wiring loom to wear away, resulting in an electrical fault. It is also possible that one of the engine control modules has short-circuited, again this would have occurred as a result of normal in-service vibrations.'

Having considered all of the available evidence that has been presented so far in this case I think it unlikely that the missing bolts on the turbo heat shield, or therefore the poor or substandard repairs, are the cause of the fire. And because of this, and despite the car not being of satisfactory quality when considering the turbo replacement, I don't believe Oodle is responsible for the damage caused by the fire because of the issues with the turbo.

Durability and safety under the CRA

As referred to above, the CRA includes durability and safety as aspects of satisfactory quality. It should be obvious why goods need to be safe to use and consumers are free to use them without fear of harm. The durability of goods is to ensure they are made to last a reasonable amount of time, depending of course on what the specific goods are and how they have been used. When applying durability considerations to a car I think it's reasonable to again consider the age and mileage of the car at the time it was supplied and the time of the defect. Consideration should also be given to the defect or specific component and the impact of the defect/component failure.

Firstly, I note that the manufacturer of Miss H's car, with this type, or a very similar type, of engine, has previously issued an action instructing its dealer network to carry out work on a certain group of cars. I understand the manufacturer had identified a potential issue with certain types of engine on this model of car, which was manufactured within certain periods. In some cases, it was reported that certain components could fail and it was then possible that the car could catch fire.

From what I can establish, Miss H's car and engine was not affected by this issue and even if it was it is of course possible that the potentially defective components have already been changed by a previous owner. I also note that the manufacturer's website shows there are no outstanding recalls when looking at Miss H's specific car.

Should Miss H have any further evidence however that indicates her car was specifically affected by this issue and that no previous work to address this has been undertaken, then I would ask that she provides this so that I can consider this further.

The evidence is in this case clear that the car caught fire and there is nothing to indicate this was under anything other than 'normal' use. I've seen no evidence or suggestion that the car had been modified in any way or that it was in any other way than the manufacturer had intended. When the car caught fire it had travelled more than 73,000 miles and was around six years old. The inspection report from S again refers to the most likely cause being an electrical fire such as short-circuit in the engine bay wiring loom as engine vibrations can cause the wiring loom to wear away, resulting in an electrical fault. It is also possible that one of the engine control modules has short-circuited...

In the absence of any contradictory evidence it seems reasonable to me that the cause of the fire is likely therefore to have been caused by a defect with the engine bay wiring loom or a short circuit of one of the engine control modules. Neither of these items are in my view serviceable items that Miss H, or any other owner, would be expected to have to change at a certain point in time or at a specific service interval.

I appreciate that components may break or fail sooner than expected. But I believe there is a difference between a component that fails or stops working, with no additional consequences, to a failed component that then catches fire, engulfs the engine compartment

and puts the driver and potential passenger in significant danger.

When considering the absence of servicing requirements for the components that are believed to have failed, and the now very clear impact of the component failure, i.e. the car catching fire, I think it reasonable to expect these components to last the lifetime of the vehicle. It is difficult to say exactly how long the lifetime of the vehicle would be but I am satisfied that would be longer than the 6 years and 73,000 miles the car had travelled when it caught fire. I think it's reasonable for Miss H to assume that with the right maintenance and upkeep that she should be able to drive the car without it catching fire.

Considering the timing of the failure of the components and the dangerous severity of the result of their failure, as evidenced by the fire, along with the requirements of the CRA around durability and safety, I consider there is sufficient evidence to demonstrate the car was not of satisfactory quality when it was supplied to Miss H. As the supplier of the car to Miss H, Oodle is therefore responsible for this and I have set out below what I consider is reasonable to compensate Miss H.

Finally, I have noted what the inspection says about there being no evidence to suggest the issues have been caused by an underlying condition that was present at the time the car was supplied. I believe the report is suggesting that because of the time elapsed and distance travelled between Miss H acquiring the car and the fire, that the wiring loom or engine control module would not have been showing signs of wear that were so significant to have caused a short circuit around 15 months after Miss H acquired the car. This is in my view a different consideration to durability and safety, as set out under the CRA. And having considered what the inspection report says about the faults not being present at the time of supply, I don't consider this sufficiently demonstrate the car met the requirements around durability and safety under the CRA.

Putting things right

The damage the fire caused to the car is substantial with the repair costs being in excess of £24,154. This is more than three times the price of the car when Miss H acquired it and is therefore in my view an uneconomical repair. Miss H has provided a copy of a letter from her insurance company declining the claim and I have not seen anything further to indicate Miss H has already received any insurance payments. If this is incorrect then I would ask the parties to clarify this, along with supporting documentary evidence, when responding to my provisional decision.

As it is uneconomical to repair the car, Oodle should now arrange for the car to be collected from Miss H and taken away. Oodle should meet the costs associated with this and I remind Oodle that the car is not in a roadworthy condition.

I understand Miss H was able to use the car normally prior to the fire, so it would be reasonable to expect Miss H to make the repayments to the credit agreement for those months. However, since the fire Miss H has been unable to use the car so I think it would be unreasonable to expect Miss H to make the repayments that would have fallen due after July 2022. If Miss H has made any payments after July 2022 these should be refunded, along with interest at 8% simple per year from the date of each payment until the date of settlement. If any payments have not been made since July 2022 and Oodle has recorded late/missed payments, or any other adverse information, to Miss H's credit file this should be removed.

Miss H has told us she was given three payments of £150 to meet the costs of a replacement hire car and she has since acquired a different car to use. I have not been presented with anything to show the actual costs Miss H incurred in arranging a hire car so

in the absence of anything further I'm satisfied the £450 already paid is reasonable for this. Finally, I have considered the trouble and upset Miss H has been caused as a result of the being supplied with a car that was not of satisfactory quality. I have again seen the video footage of Miss H and her friend arriving home with smoke coming from underneath the bonnet. They are both seen running from the car and I understand Miss H then rushed to call the fire service. I think it is also very likely that Miss H would have been watching the car as it is engulfed in flames, shortly after she got out of it. This is something that I'm sure would have been incredibly stressful and upsetting for Miss H and I consider it to be reasonable for Oodle to make an additional payment to compensate Miss H for this.

I note from the sales invoice that Miss H made a deposit payment of £740 and after allowing for the part exchange value, £2,025 was required to settle an existing finance agreement associated with Miss H's part exchange vehicle. Considering the severity of the issue here and the upset caused to Miss H I think £1,000 is an amount equivalent to what Miss H should receive for the trouble and upset she's been caused.

By cancelling the finance agreement now Miss H has arguably benefited by having the previously outstanding finance amount settled. So in an attempt to allow both parties to move forward, while having regard for what I consider to be fair and reasonable redress, I think it would be reasonable for Oodle to offset the £1,000 trouble and upset payment against anything that would still be owed on the part of the finance that was used to settle the previously outstanding finance.

Miss H's regular monthly repayments would have been used to repay the credit used to acquire the car in April 2021 and the outstanding part exchanged finance. So Miss H would have reduced the amount owed against the previously outstanding part exchange finance. Considering the number of repayments made I think it is unlikely, even allowing for the £1,000 payment above, that the £2,025 would be fully repaid by Miss H when Oodle now cancels the finance agreement.

I accept that Miss H may benefit financially by not now having to repay any outstanding amounts that are due towards the £2,025 borrowed to settle the previously outstanding part exchange finance. However, Miss H was required to acquire a replacement car and it is likely that this is also subject to finance, imposing additional financial restraints on her. I find it unlikely that Miss H would have appreciated the possibility of still owing any sums towards the previously outstanding part exchange finance, or therefore factored this in to how much she paid for the replacement car recently. Also, even if Miss H was aware of this she would not have been expecting to have to make a lump sum payment now to settle any outstanding amounts.

Having considered Miss H's circumstances very carefully, I think it would in the circumstances here be unreasonable to expect Miss H to now make any additional payments towards any outstanding sums due for the previously outstanding part exchange finance. After offsetting the £1,000 referred to above, and if necessary refunding any sums paid since July 2022, Oodle should therefore ensure the finance agreement is now cancelled with nothing further owed by Miss H.

If I am mistaken on the events around the sale and the amounts paid by Miss H or financed by Oodle, I would invite the parties to clarify this, with any supporting evidence, when responding to my provisional decision.

Both Miss H and Oodle responded to my provisional decision and have accepted the findings.

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.

Having done so, and noted that neither Miss H or Oodle has added anything further, I have reached the same conclusions as set out in my provisional decision. That is, the car supplied to Miss H was not of satisfactory quality at the time it was acquired by Miss H and Oodle is therefore responsible for putting things right.

Putting things right

To settle this complaint Oodle should now:

1. Make arrangements with Miss H so that the car can now be collected. This should be done at no cost to Miss H.
2. Cancel the finance agreement with nothing further owed, offsetting the £1,000 payment for distress and inconvenience against the account balance if necessary.
3. Refund any monthly repayments Miss H has made to Oodle after July 2022.
4. Remove any adverse information, such as missed or late payment markers, from Miss H's credit file.

Interest at 8% simple per year should be added to each of the refunded payments referred to in 3 above. Interest should be calculated from the date of each payment until the date of settlement.

My final decision

My final decision is that I uphold Miss H's complaint and direct Oodle Financial Services Limited trading as Oodle Car Finance to settle the complaint in accordance with the putting things right section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 27 February 2023.

Mark Hollands
Ombudsman