

The complaint

Mr B complains that a used vehicle supplied by Oodle Financial Services Limited (trading as Oodle Car Finance) under a finance agreement was of unsatisfactory quality.

What happened

On 3 November 2020, Mr B acquired a van with a hire purchase agreement (HPA) from Oodle. Nearly two years later, in August 2022, the brakes failed. He took it to a third-party garage (TPG) for repairs and they said the vac pump was covered in oil and fibres. Mr B returned to the supplying main dealer who told him there could be belt contamination throughout the engine and it might need replacing. Mr B didn't think that was fair and he complained to Oodle.

Oodle wanted more evidence and an independent expert was instructed to inspect the van in October 2022. He found (in summary) the oil contained fibrous material as a result of the timing belt breaking up and the timing belt had failed prematurely due to a manufacturing issue.

Oodle accepted the timing belt failure was premature but thought this could have been avoided if Mr B had the van serviced earlier - in line with the manufacturer's recommended schedule. Oodle didn't uphold the complaint and Mr B referred the matter to our service.

One of our investigators considered the evidence. She noted that Mr B entered into the HPA for business purposes but she was satisfied we could look into the matter (as the amount of credit provided was under £25,000 and the finance agreement was regulated). The investigator didn't think the Consumer Rights Act 2015 (CRA) applied – because Mr B wasn't acting as a consumer – but she considered the Sale of Goods Act 1979 (SGA) is relevant and the van should have been of 'satisfactory quality' when it was supplied.

The investigator didn't think a three and a half year old van with just under 29,000 miles on the clock would need a replacement engine in the normal course of events – even with a missed service. She was satisfied the expert considered the belt failure was premature and due to a manufacturing fault. She thought there was probably a fault present at the point of supply and the van wasn't reasonably durable as a result. She recommended the complaint should be upheld and Oodle should arrange and pay for the van to be repaired (within a reasonable timescale) and refund any monthly payments made (in full) for the time the van was off the road – for loss of use. She considered Oodle should also pay interest on any refunds plus an additional £400 compensation for distress and inconvenience and remove any adverse information from Mr B's credit file.

Oodle said the expert assumed the van was properly serviced so it told him about the missed service and obtained supplementary report. As far as it's relevant, the expert said *"Service intervals, particularly on a working vehicle....are essential to avoid premature wear to...engine components, particularly items such as the wet timing belt used on this make and model. We are also aware that the colour of the engine oil can acquire a greyish tinge which would indicate wear to the wet belt. If this had been detected at a scheduled service appropriate action or intervention could have been instigated thereby avoiding the*

consequential catastrophic engine damage”.

Oodle thinks an experienced mechanic would probably have noticed a change in oil colour if the van had been serviced in line with the manufacturer's recommendations and appropriate action could have been taken to avoid engine damage so it's not liable.

The investigator accepted the expert acknowledged that things might have been different if the issue had been detected. But she was satisfied the van had a manufacturing issue present at the point of supply. She remained of the view it was probably of unsatisfactory quality when Mr B got it and Oodle should take the steps recommended to put things right.

Oodle disagreed and asked for an ombudsman to review the matter. In summary, Oodle accepts the timing belt failed prematurely but thinks it shouldn't be held responsible as:-

- “wet belts” are a service item that require routine checks because of the possible mix of fuel in oil whereby diesel particulate filter (DPF) regeneration cannot complete causing oil contamination – and this is standard on all EU6 vehicles, especially in low mileage operation because this will happen more often, as is the case here;
- Mr B failed to maintain the van properly - a service was recommended at the last MOT but he refused and he also had work done by a non-manufacturer franchise (the TPG) before taking it back to the main dealer for checks;
- the quality of third party work cannot be substantiated and the TPG should have provided better advice around the belt issue – in which case the manufacturer might have agreed to a warranty repair, including a replacement engine, to stop further foreign particles causing problems, as is standard practice;
- the problem is not durability – it can only be related to maintenance - the manufacturer has refused to provide a replacement engine or assistance on the grounds this is a service related oil based issue, it is open to Mr B to take this up with the manufacturer and, if the service history is available, the manufacturer may re-consider;
- lack of correct servicing means there's no way to tell if there was a fault – that's what routine servicing is designed for and properly trained technicians know what to look for - given it's known that this can be a fault;
- most finance documents stipulate that it is up to a borrower to take care of goods and undertake services in line with manufacturer's recommendations to mitigate problems so Mr B may be in breach of his agreement and he made no effort to mitigate his losses - he didn't contact with Oodle when the issue first occurred, in which case Oodle would have recommended he contact the manufacturer; and
- the investigator based her view on the balance of probabilities and the expert's choice of words such as “could” are consistent with that.

Having considered the available evidence, I was inclined to uphold the complaint but my reasons weren't quite the same as the investigator's and I was minded to reach a slightly different outcome overall. I thought it was fair to let the parties see my provisional findings and comment further before I made my final decision so I issued a provisional decision on 8 June 2023. My provisional findings are set out below (in italics) and these form 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.

My role here is to consider the evidence provided by both parties, without taking sides, and decide what I think is a fair and reasonable outcome, in all of the circumstances of this particular complaint. In doing so, I must have regard to relevant law and industry guidance, amongst other things.

Oodle supplied this van under a HPA which is a regulated consumer credit agreement and our service is able to consider complaints relating to it. I agree with the investigator that the CRA doesn't apply here, given Mr B acquired the van for use in the course of his business and he doesn't meet the definition of a consumer under that legislation. The investigator refers to the SGA in correspondence. I don't think that legislation applies either but, ultimately, it doesn't make much difference. I'm satisfied the Supply of Goods (Implied Terms) Act 1973 (SGITA) applies in these circumstances and this legislation provides broadly similar protection - meaning Oodle was required to ensure that this van was of satisfactory quality when Mr B got it.

The level of quality that's considered satisfactory varies according to individual circumstances. It's generally considered reasonable, in the case of a used vehicle, to take the cost, age and mileage at the point of supply into account. This van was first registered in March 2019, it had about 6,000 miles on the clock when Mr B got it and the cash price was nearly £23,000 at that time. I think a reasonable person would accept that such a vehicle would probably have some parts that are worn and would need replacing sooner or later – which is reflected in the lower price paid in comparison to a brand new van. But there's also a reasonable expectation that a vehicle will be relatively durable - taking into account its age, price and mileage at the outset.

What went wrong?

There seems to be no dispute that the timing belt on this van failed in August 2022 – at just over 28,800 miles – causing the distribution of fibres and the engine needs to be replaced. Oodle accepts the timing belt failure was premature but considers it isn't responsible because –

- the issue might have been prevented if Mr B had the van serviced in line with the manufacturer's recommended schedule; and/or*
- Mr B took the van to a TPG who didn't fix it properly/made things worse by failing to deal with the problem and advise Mr B accordingly.*

The impact of failure to service in line with the manufacturer's recommended schedule

I have not seen a copy of the recommended service schedule for this model. Oodle says (and Mr B doesn't seem to disagree) it should be serviced every two years or 25,000 miles, whichever comes first. I haven't seen any documentary evidence of the van's service history either. Oodle reports it was last serviced at 4,000 miles in or about September 2019 and, again, Mr B doesn't seem to take issue with that.

I can see the van had just over 28,000 miles on the clock when it broke down in August 2022 so it hadn't accrued an additional 25,000 miles since the previous service at that stage. Mr B says he planned to have the van serviced in November 2022 so he may have been waiting until the 25,000 miles mark was reached. But, I accept more than two years had passed since the van was last serviced when it broke down, so it hadn't been serviced within the timescale recommended by the manufacturer.

I have gone on to consider the impact of this missed service. I've seen nothing to show (and I don't think it's suggested) that manufacturer's recommended service schedule required the

timing belt to be checked specifically or replaced at this point. The expert says it would usually be much longer before this part would need to be replaced. And I'm satisfied the timing belt is not something that would routinely be considered a service item in a van of this age and mileage.

Oodle accepts the failure of the timing belt was premature but argues that the fault might have been detected had the van been serviced as recommended - because this may have caused a change in oil colour which would have been a red flag for an experienced mechanic. I accept the expert mentions this possibility in his supplementary report - where he says, if discoloured oil was present and detected at a service it could have meant the issue was dealt with before the engine was damaged. The expert doesn't suggest however that any such discolouration would definitely (or was even likely to) have been present and picked up at this particular stage of servicing.

According to the manufacturer's service schedule the van should have been serviced in September 2021 (two years after the previous one). I can see Mr B took the van to a main dealer about six months after that - in March 2022 at just over 24,700 miles - for an MOT and the main dealer reminded him then that a service was overdue and carried out a vehicle health check (VHC). The VHC form completed at the time displays the word "green" beside the cambelt (timing belt) and there's no reference to any oil discolouration in the paperwork.

I think the MOT would have included an oil check and it's unlikely the main dealer would have failed to mention any significant change in oil colour if it had been present at the time. So, I consider it is unlikely a service undertaken in September 2021- or in March 2022 – would have found any sign of the timing belt issue. The expert doesn't say how long it would take from the belt starting to fail for the oil to become discoloured and I'm not persuaded, on balance, that undertaking a service as recommended is likely to have prevented the problem.

The role of the third party garage

I'm satisfied that Mr B wasn't required under the HPA (or anywhere else) to have this van maintained by a main dealer. It looks as if he took the van to the TPG in August 2022 because his brakes had failed and I don't think that was unreasonable. Mr B told Oodle (according to its contact notes) that the TPG found fibres from the timing belt where they shouldn't be and told him this could be the result of a known manufacturing defect.

I'm not certain what work (if any) the TPG carried out at this stage. I understand the manufacturer may have issued a technical bulletin to its main dealers about this potential issue but I can't fairly criticise the TPG if it wasn't aware of that. I've seen correspondence from the main dealer that suggests repairs were attempted by the TPG but the expert found no evidence of recent repairs when he inspected. He said any work undertaken was investigative only and he makes no criticism of the TPG's actions – which I'd reasonably expect him to include if he thought this was relevant.

I am not persuaded that it was wrong of Mr B to take the car to the TPG when he did. I've seen no compelling evidence that the TPG provided poor advice or workmanship at that time. And I am not persuaded that anything the TPG did or didn't do caused the engine damage.

Was the van of satisfactory quality?

Like the investigator, I'm satisfied the independent expert identified a specific manufacturing fault here that would have been present when Oodle supplied this van to Mr B. For the reasons I've set out, I'm not persuaded that the failure to service the van strictly in line with the manufacturer's recommended schedule and/or the involvement of the TPG caused or failed to prevent the engine damage. I'm minded to find the van was of unsatisfactory quality

when it was supplied and I've explained below what I think Oodle should do now to put things right.

Putting things right

I agree with the investigator it's fair for Oodle to arrange for the van to be collected and pay for the repairs required due to the premature failure of the timing belt to be undertaken within a reasonable time.

I've seen an estimate from the main dealer that suggests work costing over £1,700 was found to be required when the van was checked in October 2022. This doesn't include the cost of a new engine however - and there's reference to additional items such as tyres, for example, which seem unlikely to be related to the timing belt issue. I'm also not clear if the brake repairs needed were caused by the premature part failure. I would be grateful if the parties could provide details of the work required as a result of the failure of the timing belt (including costings) if possible, in response to this provisional decision.

Mr B says the van has been off the road since 17 August 2022 and I'm minded to find Oodle should refund any monthly payments made from that date to reflect his loss of use. I've also seen evidence that suggests he may have paid for repairs/diagnostic reports from both the TPG and the main dealer and for the van to be recovered - but I only have one invoice from the main dealer for £252. I don't think Mr B would have incurred these expenses if Oodle hadn't supplied a faulty vehicle. And I'm minded to find he should have any relevant costs refunded - if he's able to provide proof that this was incurred. I also find think it's fair that Oodle should pay interest on any refunds and remove any adverse information from his credit file.

Mr B makes some reference to lost earnings in his correspondence but he hasn't provided any evidence of that. It's open to him to do so in response to this provisional decision and I'll take this into account when I make my final decision. Mr B may wish to note that, in order to reasonably hold Oodle responsible for any such losses, I'd have to be satisfied that these were the direct result of being supplied with this faulty van - taking into account his obligation to mitigate his losses (which might include steps like using alternative transport, if available).

I'm satisfied that Mr B has been put to a good deal of distress and inconvenience as a result of being supplied with this faulty vehicle and I'm minded to agree with the investigator it's fair and reasonable for Oodle to pay him £400 compensation for that.

Responses to the provisional decision

I invited the parties to consider what I'd said and let me have any further comments or new information by 29 June 2023. I said I'd consider all the evidence available after that and make my final decision. Mr B didn't reply and Oodle provided detailed submissions including comments from the dealer and further evidence. It considers my provisional conclusions are flawed because (in summary) –

- the manufacturer's system (which it said was evidenced by an accompanying screenshot) sets the van's service schedule at one year "annual inspection" (or 12,500 miles) followed by the two year "oil service" which was directly intended to detect any issue or oil dilution, especially where the customer is a low mileage user like Mr B - as low mileage users tend to "fail" a lot more DPF regenerations, and cause oil dilution which in turn can cause belt de-lamination;
- there are no "known manufacturing defects" to justify the conclusion that there was a defect here - this van was built outside of any field service actions for a previous known issue on older built units, Mr B's model as no current actions required

because the manufacturer changed the service intervals to cover any further risk of oil dilution;

- the expert cannot be certain what work was done by the TPG (or be satisfied with its quality) if he didn't take off the oil sump to inspect;
- during the routine VHC for preparation of vehicles for sale, the supplying dealer checks the quality of the oil, this also constitutes the annual inspection and includes the annual inspection if needed and, if there is any suspicion of contamination, it would be investigated and a warranty claim would have been made which was in the dealer's interest;
- the belt breaking down into fibres is directly linked to failed DPF regeneration which in turn dilutes the oil and causes the belt to de-laminate and with enough de-lamination the belt would then let go, this is absolutely fundamental to the belt letting go and not necessarily a manufacturing fault.

Some of these points were new and I'd seen nothing to show that Mr B was told that low mileage use may adversely affect the van, for example, so I asked for a bit more information.

Oodle responded with more evidence and further comments from the supplying dealer. In summary, the dealer considers I've taken Mr B's side here and ignored the facts and it says:-

- the belt failed when it shouldn't have due to lack of proper maintenance and possibly a poor repair - Mr B said the TPG replaced the oil pick up as part of a repair, this is not a service item, it should really only be replaced as part of other repairs and the vehicle should not have been used further;
- older models were mentioned in previous correspondence because this was once a known issue but Mr B's van was manufactured later - or the manufacturer would replace the engine without asking for a service history;
- service intervals were changed according to build date meaning the original service interval for this van hasn't changed and the manufacturer requires 12 months inspections to detect any relevant issue before it arises;
- Mr B should have followed the manufacturer's required service schedule and there was no reason to tell him why - it would be similar to saying if you run out of coolant the head gasket would likely fail.

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 want to thank the parties for their responses. I've considered everything carefully and I'm not persuaded to change my mind by the comments made or the additional information provided. I've seen nothing to indicate that this part would have been checked specifically at the missed service or show that Mr B was made aware of any particular risk to the timing belt if the service was delayed or missed. I don't think it's reasonable to compare failing to top up coolant (or a similar well known and/or routine maintenance item) with what happened here.

Satisfactory quality includes an element of durability. I think some vehicle components can be expected to perform without any significant issue for a reasonable period of time in the normal course of events and a reasonable person would expect this particular part to last considerably more than 29,000 miles. I'm satisfied (and Oodle accepts) the timing belt failed

prematurely here. And, for the reasons I've set out already, I think this was due to an inherent defect. I'm not persuaded it was because the car wasn't serviced strictly in line with the manufacturer's recommended schedule - or due to anything the TPG did or didn't do. I remain of the view it's more likely than not this van wasn't of satisfactory quality when it was supplied to Mr B and I think it is fair and reasonable for Oodle to put things right.

I asked the parties to comment on repairs – in terms of what's required and cost. Neither party has supplied a breakdown of the work needed – or commented on the redress set out in my provisional decision or provided any new information or figures for me to consider. I note the supplying dealer says, as far as it is aware, the van needs a new engine but I can't be certain about that from the evidence I've seen. I also gave Mr B the opportunity to provide evidence to support a claim for lost earnings but he hasn't sent anything else.

Taking everything into account, I see no reason to depart from my provisional conclusions. I remain of the view it's fair for Oodle to arrange for the van to be collected and pay for any repairs needed as a result of the timing belt failing prematurely and provide refunds and compensation as set out.

My final decision

For the reasons I've given, my decision is I uphold this complaint and I require Oodle Financial Services Limited to do the following, to put things right:-

1. arrange for the van to be collected and pay for the repairs required as a result of the premature failure of the timing belt - which should be undertaken within a reasonable time;
2. refund any monthly payments made from 17 August 2022 until the van is repaired;
3. refund the cost of any vehicle recovery, repairs and diagnostic checks that Mr B paid for as a result of the timing belt failure - on proof of payment;
4. pay interest on the refunds referred to above, at 8% simple a year from the date of payment to the date of settlement;
5. pay Mr B an additional £400 compensation for his associated distress and inconvenience; and
6. remove any adverse information from his credit file.

If Oodle considers that it's required by HM Revenue & Customs to withhold income tax from the interest part of my award, it should tell Mr B 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 B to accept or reject my decision before 21 August 2023.

Claire Jackson
Ombudsman