

## **The complaint**

Mr C complains about a car he acquired under a hire purchase agreement with Oodle Financial Services Limited.

## **What happened**

In November 2022 Mr C entered into a regulated hire purchase agreement with Oodle, under which he acquired a used car. The car was nine and a half years old, its mileage was 67,000 miles, and its cash price was £3,795. About two weeks later, in December, it broke down. When Mr C first brought this complaint to our service, he told us that at this point he had driven the car for about 150 miles since acquiring it. He has since revised this estimate to 50 to 100 miles. (I think that his earlier recollection is more likely to be accurate, but the outcome of this complaint does not depend on which figure is correct.)

The car was towed back to the dealership. The dealership didn't have capacity to repair the car themselves, so they found a third party garage who could investigate and fix the problem ("the first garage"). That was done in early January 2023. The first garage told Mr C that a small object, probably a stone, had gone through the radiator grill and damaged the cooling system, and then (as a result of overheating) the cylinder head gasket had blown. There are photos of the damaged radiator with a small hole in the grill. There is some dispute about exactly what happened next, but the outcome was that Mr C agreed to the car being repaired, and he paid over £400 for this.

While driving the car back home after that repair, Mr C noticed a warning light appear on his dashboard. This same light (the engine management light or EML) had also illuminated at some time before the breakdown, so he immediately pulled over. The car was taken by the AA to another garage ("the second garage"), who found a number of problems with it. The fuel hose was about to split, which is dangerous. Some bolts, brackets and pipe clips were missing. The water hose was insecure. However, this garage refused to carry out any work on the vehicle, because there were "so many badly repaired parts." They said the car should be sent back to the dealership instead.

Again, the dealership found another third party garage to do this work ("the third garage"). It replaced the timing solenoid, and after that the EML no longer illuminated.

Meanwhile, Mr C complained to Oodle about the car, as he no longer had confidence in it. Oodle needed to know if the new issues had been present when the car was first delivered to Mr C, or if they were the result of a botched repair job following the breakdown in December. So Oodle instructed an independent expert to inspect the car, which was carried out in February 2023.

That expert wrote a report, which states that the mileage was 68,063 miles (1,063 miles since Mr C had the car). There were no warning lights or fault codes, and the car's overall condition was consistent with its age and mileage. But there was excessive pressurisation of the coolant system, with coolant pouring out of the top of the radiator, making it unsafe to drive. The expert said this was likely to be due to either some damage to the cylinder head gasket or a crack in the cylinder head, and there was evidence of a failed repair to the

coolant system. He concluded that the coolant system had probably not been in a durable condition at the point of sale, and that the dealership (and Oodle) was liable for that. The report does not mention the hole in the radiator, and it only mentions the split fuel hose in passing.

Oodle then asked the expert whether it would still be liable if the state of the coolant system was the result of a botched repair carried out by the first garage instead of by the dealer. The expert said it would not be. Based on that statement, Oodle denied that it was responsible, and did not uphold Mr C's complaint. It also said it hadn't been possible to determine if the outstanding issues had been present at the point of sale.

Being dissatisfied with that answer, Mr C brought this complaint to our service. He argued that it had never been his choice to instruct any of the third party garages to fix his car; he had always taken it to the dealership, and then the dealership had referred him. He said he was being penalised for something that wasn't his fault. Our investigator agreed with him and upheld this complaint. He said Mr C was entitled to reject the car and unwind the finance agreement.

Oodle then obtained further statements from the dealership and from the first and third garages. The dealership said it had not sub-contracted the repair work; it had only phoned round several garages until it had found one that could help Mr C. Mr C had paid the first garage directly; the dealership hadn't paid them. The dealership went on to say that it would have been impossible for Mr C to drive the car for over 100 miles if the radiator had already had a hole in it at the point of sale, which proved that the damage to the radiator – and the ensuing damage to the cylinder head gasket and the coolant system – must have happened afterwards, while the car was in Mr C's possession.

The first garage also said that it would not have been possible to drive the car very far with a hole in the radiator, as the loss of coolant would have caused the engine to overheat and break down within no more than ten miles. This would have resulted in several warning lights illuminating on the dashboard, so the driver would have been aware that there was a problem. It said that the cylinder head gasket had failed as a result of the engine overheating.

The third garage said it had only replaced the timing solenoid, and did not mention carrying out any further work. So it appears that nobody has replaced the split fuel hose. Mr C says he hasn't driven the car since April 2023, because he says it is undriveable, and it has been registered as off the road.

The investigator did not change his mind, and so as agreement couldn't be reached, he referred this case for an ombudsman's decision. I wrote a provisional decision which read as follows. (I have since made a couple of minor corrections to it, which were suggested by Mr C in his reply.)

### **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.

Even though Oodle still owns the car throughout the term of the hire purchase agreement, that does not mean it is responsible for everything that goes wrong with the car. Nor is it responsible for every botched or failed repair attempt, whether the work was carried out on the dealership's behalf or not.

Legally, a trader is required to supply goods which *when they are supplied* are of satisfactory quality (which includes durability). But the trader is not responsible for faults or damage which occur later on. So it is important to keep in mind the difference between problems which Oodle is liable for, and what it is not liable for, especially as this car has had more than one thing wrong with it.

The law does say that if a fault is discovered within six months of when the goods were supplied, then it may be presumed that the fault was present at the point of supply, unless the trader can prove otherwise. (After six months, it is for the consumer to prove that any fault was present all along.) In this case, each of the problems with Mr C's car was discovered within six months of when he acquired the car.

Whether a car is or is not of satisfactory quality is to be assessed taking into account its age and mileage, since a certain amount of wear and tear is to be expected in a used car. So what would be unacceptable in a brand new car may still be acceptable in a used car. In other words, Oodle won't even be responsible for every defect that is present at the point of supply – it is a question of whether each defect is within or outside the reasonable range of what might be considered to be satisfactory quality for a used car.

As I've said, the car's overall condition is in line with its age and mileage. The problems can be considered in three groups, which are:

- the damaged coolant system, radiator and cylinder head gasket;
- the damaged fuel hose and sundry missing items (bolts, brackets and pipe clips); and
- the timing solenoid which had failed.

I will look at each of these in turn.

A timing solenoid should last between 80,000 to 160,000 kilometres, or 50,000 to 100,000 miles. As this car had been driven 67,000 miles at the point of supply, I think that the most likely reason for the solenoid failure was ordinary wear and tear, and so I do not think this is evidence that the car was not of satisfactory quality when it was supplied to Mr C.

There is evidence from two sources about the cause of the damage to the coolant system. The first garage, which diagnosed and repaired it, said that the coolant system had been damaged by a small stone or similar object penetrating the radiator, and then the engine overheating had caused the cylinder head gasket to blow. If that is what happened, then Oodle would not be responsible for that, and nor would it be responsible if the garage failed to repair it (whatever the dealership's degree of involvement). And the expert who inspected the car in February said:

“Over pressurising of the cooling system is likely to be of a breach of the cylinder head gasket or a crack in the cylinder head.

Someone has obviously tried to seal the cooling system by placing a cooling system sealant in the coolant: this is not an acceptable industry standard practice.”

These sources do not necessarily contradict each other, if the cooling system was over-pressurised because the first garage had failed to repair the original fault. But I do not accept the expert's conclusion that the cooling system was not durable, and that this was a fault present at the point of supply. That is because the expert appears to have been unaware of the first garage's diagnosis of the cause of the problem being damage sustained after the car had been supplied to Mr C. There is no mention anywhere in the expert's report of a hole in the radiator grill, or of the engine overheating as a result of damage from an external source. All it says is this:

“[T]he vehicle broke down. The vehicle was returned to the supplying dealer for investigation, and it was found that the head gasket required replacement.”

That makes it sound as though the head gasket was already faulty at the point of sale, and had just failed after two weeks, which was not the case. I can find no evidence to contradict the first garage’s assessment of what happened, and which (as I’ve said) is supported by the garage’s photos of the hole in the radiator, which I have seen. So I am satisfied that Oodle has proved it is not liable for that.

I therefore do not accept that the issues with the cooling system are evidence that the car was of unsatisfactory quality when it was supplied.

Finally, I turn to the damaged fuel hose and the other issues that were discovered by the second garage. Again, the burden of proof is on Oodle to show that these defects were not present at the point of sale.

I suppose it’s possible that the fuel hose could have been damaged, and other items gone missing, during the repair by the first garage, but I doubt it. There is no evidence that that is what happened, and it isn’t obvious why a repair to the coolant system and the cylinder head gasket would involve tinkering around with the fuel hose. On the evidence I’ve seen so far, I think it is more likely that the fuel hose was already damaged at the point of supply. As this is a dangerous defect, I think it does mean that the car was of unsatisfactory quality at that time. On that basis, I propose to uphold this complaint.

However, under the Consumer Rights Act 2015, Oodle is normally entitled to one attempt at repairing that defect before Mr C can exercise any right to reject the car. So for that reason, I am minded to depart from our investigator’s recommendation, and to require Oodle to arrange for the car to be repaired at no cost to Mr C. That would mean replacing the fuel hose, replacing the missing brackets and so on, and securing the unsecured water hose. (But I’m afraid it doesn’t include fixing the broken coolant system.)

There is an exception to that: Oodle will not be entitled to attempt to repair the car if the repair would be impossible or disproportionate. On that point, I note that the second garage declined to attempt to repair the car because it was in such a bad state. But the dealership might take a different view of that, so I think it would be fair to let them look at it and see – or perhaps another third party garage, if Mr C has lost confidence in the dealership.

So I am provisionally minded to say that Oodle should either arrange for the dealership to repair the car at no cost to Mr C, or alternatively for Mr C to obtain a reasonable quote for the repair from another garage and for Oodle to pay him the quoted amount. And to say that if the repair fails, or nobody wishes to attempt it, then to endorse the investigator’s proposal instead.

In either case, I will order Oodle to pay Mr C £200 for his inconvenience.

### **Responses to my provisional decision**

Mr C did not accept my provisional decision. He argued that as the car has been seen by the dealership and by three garages, and it has still not been fixed, he should be entitled to reject the car. He also quoted from an email from a third party who told him that as he had reported a fault within 30 days of acquiring the car, it would be the dealership’s responsibility to fix it, or else he will have grounds to reject the car. Mr C added that he has lost confidence in the dealership.

I can understand why Mr C has lost confidence in the dealership, and so I will give him an opportunity to get a quote from a garage of his choice and I will order Oodle to pay for it. However, I have not changed my mind about which repairs Oodle is liable for. And I still think it would be disproportionate to allow Mr C to reject the car without first allowing one attempt to repair the fuel hose, replace the missing brackets, pipes and clips, and secure the water hose. No such attempt appears to have been made yet.

(Oodle did not reply to my provisional decision, but I have decided not to wait for it to.)

### **My final decision**

My decision is that I uphold this complaint in part. I order Oodle Financial Services Limited to arrange for the car to be repaired at no cost to Mr C. In this paragraph, “repair” means replacing the fuel hose; replacing the missing brackets, pipes and clips; and securing the unsecured water hose. This may be done in either of two ways:

- If Mr C provides Oodle with a quote for the repair of the car (on letterheaded paper or the digital equivalent<sup>1</sup>) by 22 March 2024, then Oodle must pay Mr C the cost of the quoted repair.
- If that does not happen, then Oodle must arrange and pay for the repair itself.

If neither party is able to find a garage which is willing to carry out the repair, or if both parties' chosen garages inform them that the cost of the repair would be disproportionate or uneconomical, then Oodle must instead allow Mr C to reject the car. That means that Oodle Financial Services Limited must arrange for the car to be collected at no cost to Mr C; cancel the hire purchase agreement with nothing further to pay; remove all information about the agreement from Mr C's credit file; refund all of the monthly payments he has made under the agreement since 27 February 2023; and pay simple interest on each refund at 8% a year from the date each payment was made to the date of settlement.

In either case, I also order Oodle Financial Services Limited to pay Mr C £200 for his inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 15 March 2024.

Richard Wood  
**Ombudsman**

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<sup>1</sup> This means a quote which contains the full contact details of the garage which provides it.