

## The complaint

Mr H's complaint is that a car supplied to him under a Hire Purchase Agreement ("HP Agreement") with Oodle Financial Services Ltd ("OFSL") was of an unsatisfactory quality. He has asked that OFSL take the car back, cancel the HP Agreement and refund his money.

## What happened

The background to this complaint was set out in my provisional decision of 11 September 2024. I have summarised the circumstances of the complaint, along with my provisional findings below.

*On or about 16 August 2023 Mr H entered into the HP Agreement with OFSL to finance the purchase of a second-hand Jaguar motorcar. Under the HP Agreement ownership of the car was vested in OFSL and the car was hired to Mr H until all payments due under the HP Agreement had been made. The cash price for the car was £19,195.00; the amount of credit provided was £18,395.00, the balance of £800.00 was paid by part exchange. The term of the HP Agreement was 60 months and Mr H was required to repay the credit and interest in monthly instalments, with a first payment of £568.89, followed by 58 payments of £518.89 and a final payment of £568.89. The total amount due and payable was £32,033.40 with an APR charge for credit of 25.8%. At the time of supply, the car was just over 6 years and 7 months old and had done 96,899 miles.*

*The car was delivered on or about 10 September 2023. Within a short period, there were problems with it. The car was inspected by a Jaguar car specialist on 9 October 2023 and issues were identified with the timing chain, guides and VVT sprocket. At that time Mr H reported the matter to the dealer; he says that he asked about the expiry of his "30-day warranty" and about returning the car and was told that he had to allow the dealer the opportunity to fix the problems before he could exercise any of his "consumer rights".*

*It seems that the car was returned to the dealer in October, for repairs, and was subsequently returned to Mr H on or about 27 October. By 2 November the car was still not running correctly. In short time it became clear that the faults with the car had not been rectified. Thereafter the car was returned to the dealer and Mr H was informed that the engine needed to be replaced. He contacted OFSL on 1 December and complained. Mr H said that:*

*"I have had nothing but disappointment and inconvenience since purchasing my vehicle from [dealer]. It has been in their workshop for various ongoing problems to the point it now requires a new engine. Unfortunately, I am at work in the Gulf of Guinea so currently unreachable by phone. I am in contact with the dealer ... but I would like to know my options moving forward. Consumer rights must come into play here and this is the 2nd complaint I am making in regard to the same vehicle. I was initially told by [dealer] that I had to give them the opportunity to fix it. Which I did and it has now progressively got worse. Please advise on how to move forward as this is not satisfactory at all".*

OFSL contacted the broker about the complaint on 12 December 2023 and said it wished to establish the facts and the customer's desired route to resolve. They also asked for the relevant documentation including details of any customer communication regarding the complaint. I return to this below.

OFSL issued a final response letter to Mr H on 19 December. Mr H was unhappy with this response, so in January 2024 he referred his complaint to this Service for investigation.

Our investigator considered Mr H's complaint. He said that:

*"Given how soon a major fault appeared, it's likely the car wasn't of satisfactory quality when it was supplied. A repair was completed, but there was still a major fault as the engine had to be replaced. Although Oodle could've presented the option to reject at this time, a repair had already been organised. Since the repair was authorised and completed, it wouldn't be reasonable to reject the car as it now appears to be of satisfactory quality, and I've not seen any evidence to suggest otherwise."*

Mr H didn't agree with our investigator. And I issued a provisional decision on 11 September 2024, which said:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*Where evidence has been incomplete or contradictory, I've reached my provisional view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.*

*In considering this complaint I've also had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. In this case, Mr H was supplied with a car under a hire purchase agreement, which is a regulated consumer credit agreement which means this Service can consider this complaint.*

*The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr H entered into. Under the HP Agreement, there is an implied term that the goods supplied will be of satisfactory quality. And, in certain circumstances there is a right for consumer's to reject unsatisfactory goods.*

#### Satisfactory quality

*In this instance, it's not disputed there was a problem with the car, nor that this fault was present when the car was supplied to Mr H. As such, I'm satisfied that I don't need to consider whether the car was of satisfactory quality when it was supplied as this is not in dispute, as evidenced by the repairs that were undertaken.*

#### Consumer's right to reject.

*There is a short term right to reject goods if within 30 days after supply the goods are not of satisfactory quality. The 30 days starts on delivery, which in this case was 10 September 2023 and does not include any days when the car is returned for repair. If a repair is requested during the initial 30 days, the period is paused so that the consumer has the remainder of the 30-day period or seven days (whichever is later) to check whether the repair or replacement has been successful and to decide whether to reject the goods.*

*Evidence provided appears to confirm that the car had problems within 30 days of delivery - a fault in the car was diagnosed by a third party on 9 October, after which it was taken to the dealer for repair, although the date it was taken is not clear.*

*Mr H said the car was returned to him by the dealer on 27 October. And, Mr H said that he asked the dealer about returning the vehicle at that time and was told that was not possible as the dealer had to have the chance to rectify the fault first, which they tried to do but did not succeed.*

*So, it's not clear if Mr H's request was made within the 30-day period, as such period may have been extended, but if it was, then it seems to me that Mr H may have been deprived of his short term right to reject. However, for present purposes I will assume that the request was made outside the 30-day time limit.*

*After 30 days the dealer has one opportunity to provide a remedy. Section 24(5) of the CRA says:*

*"a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract."*

*This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for OFSL – the first attempted repair is the single chance at repair. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault.*

*The CRA is clear that, if the single chance at repair fails, as was the case here, then the customer has the right of rejection. However, this doesn't mean that the customer is required to reject the car, and they can agree an alternative remedy i.e., further repairs to the car.*

*Therefore, it seems to me the question I have to consider is whether Mr H authorised or agreed to the second round of repairs to the car being carried out in lieu of his right to reject and return the car. On balance and having reviewed the available evidence, I don't think he authorised those repairs, and I do not think that he waived his right to reject. In this regard I disagree with our investigator's view. I'll explain why.*

### *My analysis*

*The fact here is that within a short period after delivery serious quality problems with the car meant the engine had to be replaced and this took some time. There were possibly two options for resolution: repair or reject. From the evidence submitted it's clear to me that Mr H wanted to reject the car. He asked about this in October when he raised the issue of expiry of the 30-day 'warranty period'. And, in December he contacted OFSL; OFSL's own file note records that Mr H said he was disappointed and inconvenienced; that the car had various problems and now required a new engine; that he would like to know his options; he said that "consumer rights must come into play"; that he had had to give the dealer the opportunity to fix it; which he did and it had got progressively worse, and how could he move forward as this was not satisfactory at all.*

*I think this clearly evidences that Mr H was not happy about the proposed repairs and wanted to return the car. And it seems clear that at this time, the repairs had not been effected - the repaired car was returned to Mr H on 25 January 2024.*

*On 12 December OFSL said to the broker:*

*“Once we have established the facts.... [and] the customer’s desired route to resolve, then [we] can look at the matter further...” [Emphasis added].*

*OFSL also asked the broker to provide “Details of any customer communication regarding [these] issues”. [Emphasis added].*

*On 19 December, OFSL wrote its final response letter (FRL) to Mr H and said:*

*“Your Concerns:*

*To reach this decision, I have reviewed your complaint together, my overall understanding of your concerns with the vehicle are summarised below: [Emphasis added].*

*-You advised a new engine needed to be fitted.*

*In view of the above, you have requested to have the vehicle repaired at no cost to yourself.”*

*On receipt of the FRL, Mr H responded and again made it clear that he wished to reject the car. On 21 December he again asked about his options and said:*

*“I believe I should be able to return the vehicle to [Supplier] and be released from all financial contracts for this vehicle as it is not up to standard. Please advise if this is something that can be resolved or if I need to progress this further.”*

*He followed this up again on 2 January and said he would escalate the matter if necessary. In the absence of any further response, Mr H submitted his complaint to this Service on 5 January.*

*In these exchanges and the accompanying communications, I can see no evidence of Mr H authorising any repairs. On the contrary, I see a consistent effort on his behalf to reject the car. In this regard, I think it’s material that OFSL asked the broker to provide:*

*“Details of any customer communication regarding [these] issues”.*

*No communications are revealed on this specific point i.e. authority given to repair, nor on Mr H’s repeated questions about his “consumer rights” and desire to reject /return the car, despite the fact that this was clearly an issue he had raised on more than one occasion previously.*

*If Mr H had authorised repairs in lieu of rejection, I would have expected this to have been clearly recorded and confirmed. Instead, the next item of correspondence is the FRL. However, it seems clear to me that the FRL did not provide an accurate understanding of Mr H’s concerns, because as he made clear in his earlier and subsequent communications, he wished to exercise his right to reject. In short Mr H asked OFSL to explain his rights and OFSL should have done so in terms that were clear and understandable to Mr H. But OFSL failed to do so. OFSL said they wished to establish Mr H’s “desired route to resolve”. His desired route was clearly to return the vehicle. Having established that it seems to me that OFSL should have facilitated a return. Instead, OFSL determined that a repair should proceed, and they did not respond to the communications sent by Mr H after he received the FRL.*

*Furthermore, contrary to the statement in the FRL, it was not, it seems to me, for Mr H to “advise a new engine needed to be fitted”, that surely was a matter for others.*

*I also note that when asked by our investigator if he had authorised the repairs which were concluded in late January 2024, Mr H said:*

*“When the vehicle went back to have the engine work carried out I complained again and asked for my options. They just replied and said the work would be done free of charge. Therefore I have never been given the option of any alternative arrangements other than repair.”*

*I find that that is a correct summary of what happened.*

*For the reasons explained above, I think it's clear that: (a) Mr H repeatedly expressed his wish to exercise his right to reject; (b) there is no evidence that he authorised repairs in lieu of his right to reject; and (c) as a matter of law, he had such a right, at least after the expiry of the 30-day period after supply, if not before. My provisional decision therefore is that Mr H should have been granted his clear stated wish to reject the car and that I uphold this complaint.*

#### *Impaired Usage*

*Mr H has been able to use the car while it was in his possession. And, while it was being repaired, he was also provided with various courtesy cars, which he says were not equivalent to the car supplied, to keep him mobile. Because of this, I think it's only fair that he pays for this usage.*

*However, given the issues with the car, especially the time to diagnose and effect the repair I'm also satisfied that Mr H's usage and enjoyment of the car has been impaired. Because of this, I also think it's fair that OFSL refund some of the payments Mr H made. And I think a refund of the payments made prior to the final completion of the engine replacement and redelivery of the car to Mr H fairly reflects the impaired use caused by the car not being of a satisfactory quality.*

#### *Inspection and Repair Costs*

*It is my understanding that the costs incurred in repairing the car / having the car inspected have been borne by the supplier. But if not, given that the car wasn't of a satisfactory quality when supplied, I think it's only fair that OFSL reimburse / pay these costs if they have been borne by Mr H.*

#### *Distress & Inconvenience*

*However, it's clear that Mr H has been inconvenienced by the repairs to the car. And he was further inconvenienced by being provided with a courtesy car (or cars) that wasn't suited to his needs. Had OFSL supplied him with a car that was of a satisfactory quality, this would not have been necessary. So, I think OFSL should pay him £500 in compensation to reflect the distress and inconvenience caused.*

*Therefore, I intend to ask OFSL to:*

- end the HP Agreement with nothing more to pay;*
- collect the car at no cost to Mr H;*
- remove any adverse entries relating to the HP Agreement from Mr H's credit file;*
- refund the £800.00 part exchange deposit Mr H paid (if any part of this deposit is made up of funds paid through a dealer contribution, OFSL is entitled to retain that proportion of the deposit);*

- *refund the payments made under the HP Agreement in the period up to the completion of the engine replacement and return of the car to Mr H;*
- *apply 8% simple yearly interest on the refunds, calculated from the date Mr H made the payment to the date of the refund; and*
- *pay Mr H an additional £500.00 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.*

*If OFSL considers that tax should be deducted from the interest element of my award, they should provide Mr H with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.*

Both Mr H and OFSL responded to my provisional decision. Mr H said he had nothing further to add, and OFSL said that they did not accept the decision.

### **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.

OFSL disagreed with my provisional decision. It's not necessary for me to repeat everything that OFSL said in response to my provisional decision, however, in summary OFSL said that because Mr H had allowed the vehicle to be returned to the dealer for repairs he had in effect waived his right to reject. They also said that Mr H had changed his mind on the repair, that the "options" were not discussed and that it was open to Mr H to take independent advice.

Having considered this further submission for OFSL, I have reached broadly the same conclusion as set out in my provisional decision. That is, due to the issues with the car, Mr H had the right and should have been granted his clear stated wish to reject the car. As explained in my provisional decision, returning the car to the dealer did not in my view amount to Mr H waiving his right to reject. OFSL failed in its duty to Mr H: from the time that the problems with the car first became apparent he'd asked about returning the car and, by its own admission, OFSL failed to explain to Mr H his rights. The fact that Mr H could have taken independent advice, is not relevant to that duty. Therefore, I uphold this complaint, and OFSL is responsible for putting things right.

### **Putting things right**

To settle this complaint OFSL should now:

- end the HP Agreement with nothing more to pay;
- collect the car at no cost to Mr H;
- remove any adverse entries relating to the HP Agreement from Mr H's credit file;
- refund any costs incurred by Mr H in repairing the car or having it inspected prior to its return for engine replacement;
- refund the £800.00 part exchange deposit Mr H paid (if any part of this deposit is made up of funds paid through a dealer contribution, OFSL is entitled to retain that proportion of the deposit);
- refund the payments made under the HP Agreement in the period up to the completion of the engine replacement and return of the car to Mr H;
- apply 8% simple yearly interest on the refunds, calculated from the date Mr H made the payment to the date of the refund; and

- pay Mr H an additional £500.00 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

If OFSL considers that tax should be deducted from the interest element of my award, they should provide Mr H with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

### **My final decision**

For the reasons explained, my final decision is that I uphold Mr H's complaint, and direct Oodle Financial Services Limited to settle this complaint in accordance with the putting things right section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 5 November 2024.

Michael Hoggan  
**Ombudsman**