

The complaint

Miss M is unhappy that a car supplied to her under a hire purchase agreement with Oodle Financial Services Limited trading as Oodle Car Finance was of an unsatisfactory quality.

What happened

In January 2022, Miss M was supplied with a used car through a hire purchase agreement with Oodle. The cash price of the car was £7,900 and Miss M paid a £99 deposit as well as part-exchanging her existing car for £5,443. However, Miss M had £7,441.65 finance outstanding on the car she part exchanged, meaning the agreement with Oodle was for £9,799.65 over 60 months; with an initial payment of £268.04, 58 monthly payments of £218.04 and a final payment of £268.04. At the time of supply, the car was just over eight years old, and had done 63,318 miles.

On collecting the car, Miss M noticed some cosmetic damage which she raised with the supplying dealership. She says they agreed to repair this damage, but the repair never took place. So, in June 2022, Miss M complained to Oodle about this, and that a coolant warning light had come on, which made the car undrivable.

Oodle arranged for an independent engineer to inspect the car, and this inspection took place on 7 July 2022. In the engineer's report, dated 18 July 2022, they concluded there was cosmetic damage to the rear bumper and an active coolant leak that made the car undrivable. The engineer said there was evidence this coolant leak was longstanding and would've been present when the car was supplied to Miss M. As such, they considered the sales agent was liable for the repairs.

Oodle responded to Miss M's complaint, upholding it, and agreeing that the dealership would carry out the repairs. They also refunded Miss M a monthly payment to account for the time she had been unable to use the car. Miss M didn't take the car back to the dealership for repair and, after some discussions between the dealership and Oodle, the dealership agreed to collect the car for repair instead. However, Miss M then refused to allow this, asking to be able to reject the car. Oodle insisted they had the right of repair, but Miss M said things had taken too long, so she should be allowed to reject the car. Unable to reach an agreement, Miss M brought her complaint to us for investigation.

Our investigator said it wasn't disputed there was a fault with the car when it was supplied, nor that this made the car of an unsatisfactory quality. However, the investigator said that Oodle had the right to repair the car, and they agreed to do this within a few weeks of Miss M raising her complaint with them. So, they didn't think this meant Miss M had the right to reject instead.

The investigator explained that the delays in the car being repaired had been mainly caused by Miss M refusing to allow the dealership to collect the car, and there was nothing to show that either Oodle or the dealership had unfairly delayed matters. So, the investigator didn't uphold the complaint, and said that the already agreed repairs should take place.

Miss M didn't agree with the investigator. She said the car had been faulty when it was supplied to her and had been off the road since April 2022. She said she'd had to purchase a different car because of this, and she thought the fair solution would be to allow her the right to reject.

Miss M was asked to provide evidence of when the car first became undrivable, and that the dealership had refused to repair the car as she had claimed. As she didn't provide this, her complaint was initially closed. Miss M stopped making payments to Oodle and, in January 2024, the agreement was first defaulted, then terminated, and Oodle started proceedings to repossess the car. Miss M raised this as a new complaint to us and it was agreed that we would reopen her original complaint and pass it to an ombudsman to make a final 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my 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 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. Miss M was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Oodle are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Oodle can show otherwise. So, if I thought the car was faulty when Miss M took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Oodle to put this right.

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 Miss M. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. Instead, I'll focus on what I think Oodle should do, if anything, to put things right.

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. The CRA is also clear that, if the single chance at repair fails, then Miss M has the right of rejection.

However, section 23(2) of the CRA also states *“If the consumer requires the trader to repair or replace the goods, the trader must (a) do so within a reasonable time and without significant inconvenience to the consumer.”*

Given this, what I need to consider is (1) if Oodle have the right of repair under section 24(5) of the CRA and, if they do, (2) have they unreasonably delayed the repair to the car and/or caused Miss M significant inconvenience such that, under section 23(2)(a) of the CRA, she now has the right to reject the car.

I've seen a copy of the independent engineer's report, dated 18 July 2022. This report makes it clear that it's the coolant leak, not the cosmetic damage, that makes the car of an unsatisfactory quality at the point of supply. The engineer also confirmed their duty is to the courts, not to the person who instructed or paid for the report. As such, I'm satisfied this report is reasonable to rely upon.

I've noted that Miss M has said the car became undrivable, due to the coolant leak, in April 2022. But I haven't seen any evidence i.e., a report from a garage or any correspondence between Miss M and a garage, the dealership, or Oodle that shows me this was the case.

What I have seen is that Miss M contacted Oodle about this matter on 11 June 2022. Oodle arranged for the car to be independently inspected, which as I've said took place on 7 July 2022, with the report being produced and sent to Oodle on 18 July 2022. Oodle say they received this report on 19 July 2022 and, by 27 July 2022, they had agreed that the dealership would undertake all repairs. Miss M was advised of all this in Oodle's final complaint response letter of 28 July 2022.

This letter confirmed that Oodle agreed to refund Miss M one monthly payment for the time she had been without use of the car. It's my understanding this was credited to Miss M's account, but if this wasn't the case, and Oodle haven't yet made this payment, I would expect them to do so.

As this was the first time any issues with the car were raised with Oodle, and given that I've seen no evidence that the dealership had attempted to repair the car before Miss M complained to Oodle (nor has Miss M said this was the case); I'm satisfied that, under section 24(5) of the CRA, Oodle have the right of repair.

In her comments, Miss M has said that the dealership refused to repair the car. However, despite being asked to, she has been unable to provide anything to show this was the case. But I have seen correspondence where the dealership advised Oodle that Miss M was refusing to allow them to collect the car for repair – asking for rejection instead.

Given this evidence, that Miss M has confirmed she purchased an alternative car around this time, and that she's always maintained that she wanted to reject the car supplied by Oodle, then I think it's more likely than not that Miss M refused to allow the car to be repaired, rather than the dealership refusing to repair the car after agreeing to do so. As such, I don't find that Oodle unreasonably delayed the repairs to the car, so section 23(2)(a) of the CRA doesn't apply and Miss M doesn't have the right to reject the car. And I won't be asking Oodle to allow Miss M this right.

The position has moved on from when the investigator issued their opinion – Miss M stopped making payments to Oodle and the agreement was then defaulted and terminated. Miss M has said that the resulting adverse information on her credit file has affected her ability to get a new house. While I appreciate the position Miss M now finds herself in, I haven't seen anything that shows me Oodle have acted unfairly – they agreed to repair the car, which Miss M refused, and they terminated the agreement after Miss M stopped making payments.

Miss M would now like to have the car repaired and recommence payments. Given what has happened, that the agreement has been terminated in line with the terms Miss M agreed to, and that Miss M has said the car requires more repair work due to standing unused for more than a year, I won't be directing Oodle to do this. While I appreciate this will come as a disappointment to Miss M, this doesn't stop her reaching a mutually agreeable solution with Oodle to keep her with the car, if that's what both parties want.

My final decision

For the reasons explained, I don't uphold Miss M's complaint about Oodle Financial Services Limited trading as Oodle Car Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 19 September 2024.

Andrew Burford
Ombudsman