

The complaint

Mrs D complains about the quality of a car supplied on hire purchase by Oodle Financial Services Limited trading as Oodle Car Finance ('Oodle').

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my role resolving disputes with minimum formality.

Mrs D says the car has been having engine power related issues since shortly after supply. The car has had trouble starting, been slow to accelerate and displayed error codes.

Mrs D says that she has had to stop driving the car due to the issues and now wants to reject it. Oodle commissioned an expert report and as a result of this it says the issues are caused by reasonable wear and tear rather than an inherent fault.

Mrs D escalated her complaint to this service. Our investigator did not uphold it.

Mrs D has asked for an ombudsman to make a final decision.

I issued a provisional decision on this case which said:

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

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the relevant time.

The agreement in this case is a regulated consumer credit agreement. As such, this service is able to consider complaints relating to it. Oodle is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The Consumer Rights Act 2015 is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".

The Consumer Rights Act 2015 says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The Consumer Rights Act 2015 ('CRA from now on') says the quality of the goods includes

their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

At the start of September 2022 Oodle supplied Mrs D with a second-hand car that was around 9 years old and had done around 85,000 miles at the point of supply. The dealer priced it at £7,493 which is notably less than what a new or newer model with less mileage would cost. It is fair to say that in these circumstances a reasonable person would consider that the car had already suffered significant wear and tear – and was likely to require more maintenance and potentially costly repairs than you might see on a newer, less road worn model. And I can't see evidence that the dealer described the car in such a way that would alter those expectations.

However, with that said – despite the age and mileage I don't consider a reasonable person would expect to buy a car like this with underlying faults causing issues with power and acceleration. Nor, would I expect this to be accompanied by engine warning lights and a litany of error codes. However, that is what appears to have occurred here.

Mrs D has been very consistent with her account of what occurred within the first 10 days of using the car. And this is backed up by her early contact with Oodle in September 2022 where she described the issues she was having. Her account is further supported by a diagnostic she had carried out on 16 September 2022 which shows a report of 'engine light on/trouble starting' and lists several error codes found including those relating to 'electronic accelerator' a cylinder malfunction and other apparent electrical faults.

It appears the dealer simply cleared the faults and returned the car to Mrs D who continued to have issues with it. This is all detailed in her testimony. She then got another diagnostic on 22 September 2022 which shows a report of 'engine light back on & trouble accelerating' and then lists even more error codes than before including several relating to the throttle and other electronic faults. The diagnostic concludes 'suspected ECU fault' and advises Mrs D to take it to a specialist/main dealer.

From what I have seen Mrs D had evidence to show significant engine/power/electrical issues with the car almost straight after supply. And indicating the car was supplied with underlying related faults. I think this would be unacceptable to the reasonable person, even factoring in the age and mileage of the car at the point of supply.

So I think the evidence persuades me, on balance that the car was not of satisfactory quality at the point of supply. And that Mrs D was entitled to a remedy under the CRA.

Because of when the faults occurred – Mrs D was actually entitled to reject the car under the 30 day short term right to reject in the CRA. I can also see that the broker acknowledged that Mrs D made a request to the dealer to reject the car on 22/9/22 (within 30 days) on discovery of the repeating fault codes. However, this appears to have been denied by the dealer despite Mrs D repeating this request over the coming weeks.

Firstly, it wasn't the dealer or broker decision as to whether Mrs D could reject here as the supplier under the finance agreement is Oodle. Furthermore, it isn't fair for a supplier to prevent Mrs D from exercising her statutory right to reject in these circumstances. Therefore, based on this information alone I consider that Mrs D should have been allowed to reject the car and her complaint should be upheld.

I note the broker says the dealer attempted repairs. It says that it identified a DPF blockage. However, there are no job sheets relating to this – or persuasive information about what repairs were carried out and why. Nor is there persuasive evidence showing why the dealer

apparently decided not to investigate and address the source of the repeating fault codes that were occurring previously. I think all of this casts doubt on whether the underlying faults had been properly addressed by the dealer.

I note there has been a mention of glow plugs being a previous repair that was carried out on the car. I note at the time of this repair a replacement electronic accelerator was fitted too. However, these repairs seem to have occurred prior to Mrs D taking the car (the job sheet is dated from August 2022) so I don't think that shows that the issues she was having with acceleration were addressed by the dealer at the time. In fact to me it shows that there were ongoing issues with acceleration and power prior to Mrs D taking supply of the car – which supports the case that the car had an underlying issue related to loss of power/acceleration when supplied.

Mrs D has maintained that the car had continued to be problematic after the dealer involvement. And I can see that she took it into a garage again in February 2023 for issues relating to power (it was not starting again). Error codes were found and a 'clutch switch' was cleaned – but in light of the overall situation here (and what occurred later) I am not persuaded this was an isolated problem and unrelated to the underlying issues that appear to have pre-dated Mrs D having the car and emerged shortly after she took supply of it.

I note that in June 2023 Mrs D took the car in for another diagnostic due to warnings on the dashboard. The diagnostic found errors and mentioned a problem with a throttle position sensor likely being the underlying issue. Several error codes were found at this time including the same ones found in September 2022 relating to the throttle, cylinder and electrical faults like the oil level sensor.

This latter diagnostic strongly indicates the problems Mrs D had immediately after supply were never properly addressed by the dealer. And as I have indicated, the dealer has not provided persuasive evidence to show it did address and fix these issues.

This brings me to the independent report ('Report A') which Oodle commissioned and was carried out in August 2023. Report A confirms the vehicle is suffering from an engine fault code and a 'significant misfire'. It also suggests that there are issues with the throttle potentiometer. From simply looking at the job sheet history and testimony this appears to be very closely linked with the faults identified back in September 2022 and supports a finding that underlying faults inherent at the point of supply were not fixed by the dealer.

I note the expert who carried out Report A concludes the issues are wear and tear related and could not have been present at the point of sale due to the mileage covered by the car (around 7,000 miles at that point). However, I don't find this persuasive in the circumstances when the expert:

- concludes 'there is no suggestion the current symptoms were present at the point of sale' despite there being clear diagnostics from September 2022 suggesting this (including identical fault codes to those which later came up in June 2023); and*
- accepts they were unable to road test the car and unable to diagnose the cause of the symptoms without further checks under 'workshop controlled conditions'.*

Later on the expert provided some further information suggesting the sudden failure of an electrical component relating to the 'No3 cylinder injector' is in fact responsible for the misfire and engine management light showing. However, I don't find this persuasive in showing the car is of satisfactory quality here noting:

- it isn't really explained why or how this conclusion has been reached in light of the other evidence suggesting other problems – including those with the throttle;*

- the car was showing engine management light illumination and error codes relating to cylinder 3 back to the very first diagnostic on 16 September 2022 (when Mrs D had barely used the car) – so even if these are the source of the issues then there is clear evidence showing the problems were likely present at the point of sale in any event.

In summary, I am satisfied that Mrs D has the right to reject the car because:

- it was likely of unsatisfactory quality at the point of sale and Mrs D exercised her short term right to reject within 30 days of taking delivery but was unfairly denied;
- the underlying faults with the engine/electronics causing power loss and warning lights which I am satisfied were present at the point of sale have not been adequately repaired in any event (giving rise to a final right to reject as there has been one attempt at repair already).

I now turn to fair redress.

Oodle should collect the car at no further cost to Mrs D. It should also end the finance agreement. Oodle should also make sure there is no adverse credit information relating to this agreement on her credit file.

I understand there is no deposit to refund here. But Oodle should refund Mrs D all the monthly payments she has made from when she has stopped using the car due to the ongoing issues. From what I understand she discontinued use of the car from around the start of July 2023 so she should fairly be refunded any payments made from 1 July 2023. Before this time Mrs D had taken the car in for diagnostics and the dealer had attempted to repair it (and apparently had it for a few weeks in total). So I think it also fair that Oodle refund Mrs D's first monthly instalment to reflect loss of use prior to ceasing to drive it completely.

Mrs D got some use of the car so should pay for her other rentals – however, her use was impaired by the ongoing issues with it not starting, loss of acceleration and warning lights appearing intermittently. This isn't a science but to reflect this impaired use I think it fair that Oodle refund 5% of each monthly rental after the first month and up to July 2023 when she stopped using the car.

I understand Mrs D stopped taxing the car when she stopped driving it. But Oodle should fairly refund insurance costs she paid on the car from 1 July 2023 to the date of settlement (on production to Oodle of valid proof of payment).

From what I understand Mrs D has paid for some repairs and diagnostics to date related to the overall issues she has been having with the car costing £105 in total. I have seen the invoices for these for £52.50 each time with proof of payment so am satisfied she can claim these too.

Mrs D has also been caused distress and inconvenience by the problems with the car – and I can see that she has mentioned the 'anxiety caused by this protracted and unresolved situation'. I think Oodle could have acted sooner to bring about a rejection of the car here – and this matter has gone on for longer than it should have. I have taken into account the information on our website about awards for distress and inconvenience and after doing so I think an award of £250 is appropriate here – noting the length of time this matter has been going on for and the worry it has caused.

My provisional decision

I uphold this complaint and direct Oodle Financial Services Limited trading as Oodle Car

Finance to:

- *End the agreement and collect the car at no further cost to Mrs D, ensuring that no adverse credit reporting appears on her credit file in relation to said agreement;*
- *refund Mrs D any payments she made from 1 July 2023 onwards;*
- *refund Mrs D her first monthly payment in full; and*
- *refund Mrs D 5% of each monthly payment she made after her first monthly payment and up to 1 July 2023;*
- *reimburse Mrs D for car insurance from 1 July 2023 to the date of settlement that she is able to evidence to Oodle;*
- *reimburse Mrs D for diagnostics/repair costs of £105;*
- *pay Mrs D 8% simple yearly interest on all refunds from the date of payment to the date of settlement; and*
- *pay Mrs D £250 compensation.*

If Oodle deducts tax from my interest award it should provide Mrs D with a certificate of tax deduction.

Mrs D said she was satisfied with my decision and highlighted the significant difficulties and financial burden the matter has caused her.

Oodle disagreed with my decision. In summary, it said:

1. Report A was carried out by an expert and their experience and knowledge cannot be challenged unless there is evidence to the contrary. It should not be 'disregarded' as 'non-persuasive'.
2. Mrs D did not pay her first monthly payment as the direct debit bounced and this was paid in arrears on 5th November 22 – so she isn't due a refund of the first monthly payment. And Mrs D paid 9 payments (Oct 22 until June 23) so is not due a refund from July 2023.
3. There are further comments from the dealer questioning how Mrs D had done around 7,000 miles in the car if the repairs were not successful.

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.

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision alongside the points below:

I will deal with Oodle's key responses in respect of the numbering above:

1. I would like to make it clear that I have not 'disregarded' Report A or the follow up comments from the engineer who prepared said report. Furthermore, I acknowledge the experience and expertise which said engineer has and my conclusions are not intended to place me in a greater position of expertise on mechanical aspects of cars. However, as an ombudsman I have to weigh up evidence in light of the facts presented to me. I have gone to some lengths in my provisional decision to explain why I do not find the comments of the engineer persuasive in showing that the car is not suffering from the same faults which were inherent at the point of sale. I do not consider it necessary to repeat my findings on this. However, I note in particular there is evidence that strongly indicates the same faults were present at an early stage which the engineer has not directly addressed.

2. The point of my direction is that Miss D gets a month's payment back to reflect loss of use of the car – so whether her first payment was paid in arrears or otherwise Oodle still needs to refund this first payment. However, if Oodle is indicating (and that isn't clear) that Miss D has not paid all her contractual payments up to 1 July 2023 then it wouldn't be fair for Oodle to refund this monthly payment. It also stands to reason that if Miss D has not made any payments from 1 July 2023 that Oodle would not refund these – but it doesn't change the principle underlying my direction.
3. I am aware Miss D has covered notable mileage in the car – however, her account has been consistent that she had ongoing issues with engine warnings and loss of acceleration throughout. Evidently these did not completely prevent her from using the car initially – but it doesn't in itself show that the repairs were successful – particularly in light of the other factors that I refer to in my provisional decision which pose significant questions over what repairs were actually carried out on the car.

Even if Oodle continue to disagree with my findings on the success of any repairs I think it also worth pointing to the following conclusion in my provisional findings. Which mean that in any event it is fair and reasonable that Miss D can now reject the car:

- *it was likely of unsatisfactory quality at the point of sale and Mrs D exercised her short term right to reject within 30 days of taking delivery but was unfairly denied;*

As I have said – Oodle's comments do not persuade me to change my findings here.

Putting things right

Oodle should put things right in accordance with my direction below.

My final decision

I uphold this complaint and direct Oodle Financial Services Limited trading as Oodle Car Finance to:

- End the agreement and collect the car at no further cost to Mrs D, ensuring that no adverse credit reporting appears on her credit file in relation to said agreement;
- refund Mrs D any payments she made from 1 July 2023 onwards (if applicable);
- refund Mrs D her first monthly payment in full (even if this was made in arrears – and as long as Mrs D has made all her monthly payments from the start of the agreement until 1 July 2023); and
- refund Mrs D 5% of each monthly payment she made after her first monthly payment and up to 1 July 2023;
- reimburse Mrs D for car insurance from 1 July 2023 to the date of settlement that she is able to evidence to Oodle;
- reimburse Mrs D for diagnostics/repair costs of £105;
- pay Mrs D 8% simple yearly interest on all refunds from the date of payment to the date of settlement; and
- pay Mrs D £250 compensation.

If Oodle deducts tax from my interest award it should provide Mrs D with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 22 November 2024.

Mark Lancod
Ombudsman