

## **complaint**

Mrs W complains that Oodle Financial Services Limited (trading as Oodle Car Finance) has provided a car through a hire purchase agreement that wasn't of satisfactory quality. She complains Oodle hasn't carried out repairs or allowed them to reject the car.

## **background**

Mrs W entered into the hire purchase agreement on 14 December 2018. The car she acquired through the agreement was over 10 years old (since registration) and had done around 66,000 miles. Mrs W borrowed £6,000 repayable over 27 months. Although Mrs W entered into the hire purchase agreement, it was predominately her son who drove the car.

Mrs W reports her son wasn't allowed to drive the car on the test drive; it was driven by a member of staff from the dealership. She says a noise was noted and her son was told it was normal. The dealership reported Mrs W's son did test drive the car and was warned that his style of driving might impact the dual mass fly wheel or clutch.

I understand the car was booked into a garage on 21 December 2018 because of the knocking noise. The garage carried out an inspection and discovered the dual mass fly wheel was faulty and advised Mrs W to contact the dealer. Mrs W said she did this but didn't get anywhere.

In March 2019, the car seized and was immobile. The car was recovered by the aforementioned garage, which carried out a diagnostic test. It removed the inlet manifold and found a swirl flap was missing; it was suspected it had come away and been ingested by the engine causing damage. Mrs W notified Oodle of the issues with the car and complained, it in turn liaised with the dealership. As Mrs W was seemingly not getting anywhere, she asked us to get involved. During this time Oodle arranged for an inspection to be carried out. This took place on 7 May 2019 and it concluded that any reported problems weren't present or developing when the vehicle was acquired. Oodle therefore didn't uphold the complaint.

Our investigator was satisfied the complaint should be upheld. He didn't find the independent engineer's report persuasive as it said further inspection and investigation was needed but this didn't take place. And as swirl flaps are supposed to last the lifetime of a vehicle, he concluded there was likely a fault with the swirl flap and dual mass fly wheel when the car was acquired and so it wasn't of satisfactory quality.

Oodle disagreed and asked for the matter to be referred to an ombudsman. It said given the below average condition of the car and the miles done since it was acquired it remained satisfied the problems were present or developing at the time. It also said it thought the engine failure was likely a sudden occurrence and as it had travelled over 6,000 miles since it was acquired it wasn't in that condition when it was acquired. Oodle further argued the independent report had been carried out by a suitably qualified inspector.

Mrs W was particularly unhappy to find out Oodle had disagreed with the outcome reached; she had received a call saying the car was being collected and a refund would be made. Oodle accepted it raised Mrs W's hope of this being resolved in her favour and offered £650 in resolution for that.

Prior to deciding this complaint, I asked that Oodle be sent the information from Mrs W's garage inspection. This included pictures showing the engine had been taken apart and the garage's findings. Oodle had no further comments to make.

I also asked Mrs W for further information:

- What were they told by their garage about driving their car after it was inspected on 21 December 2018? A: to drive it carefully.
- Did Mrs W have evidence of contacting the dealership or Oodle notifying them of the problems with the car, prior to it seizing? A: No this was all done verbally over the phone.
- What was the up to date position with the car and the finance agreement? A: the car is currently being kept off road and not all repayments have been made. Mrs W also told us her son bought another car as he needed transport for work; they had asked for payment breaks on the finance which weren't granted, and they can't afford both.

### **my findings**

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

Mrs W acquired the car using a hire purchase agreement in December 2018. As the finance provider Oodle is responsible for the quality of the car provided. The relevant legislation is the Consumer Rights Act 2015 and, in summary, this means the car provided using the agreement should be of satisfactory quality.

When deciding whether something was of satisfactory quality, there are a number of factors to consider, such the age and mileage of the car. This car was over ten years old and had done around 66,000 miles so it's likely it would have shown signs of wear and tear. Oodle wouldn't be responsible for any wear and tear as this isn't a defect but it would be responsible for any defects you wouldn't expect (or reasonably be aware of) for a car of this age or mileage.

In this case there is quite a lot of contradictory information; Mrs W says her son wasn't allowed to test drive the car and was told the knocking noise was normal, whereas the dealership reported to Oodle that he did test drive the car and further that he was warned his driving style meant it wouldn't be responsible for any problems with the clutch or dual mass fly wheel. Further Mrs W says she tried contacting the dealership about the car but didn't get any help, but the dealership says it wasn't made aware of any issues prior to the car seizing.

Where the evidence is incomplete, inconclusive or contradictory, I make my decision on the balance of probabilities – this is what is most likely to have happened given the evidence that is available and the wider surrounding circumstances.

I fully accept that a person's driving style can impact on the longevity of car parts. In particular, I'm aware that high mileage, a person's driving style or a worn clutch can all cause or contribute to a dual mass fly wheel failing. Oodle's engineer's report said given the time and mileage elapsed since the car was acquired there was no evidence to suggest conditions would have been developing at that time.

However, I don't find this report persuasive. The engineer has specifically reported that the inspection was limited, and they couldn't comment on any knocking noise coming from the engine as it was in a non-running state. Further the engineer recommended immediate attention under workshop conditions and dismantling of the engine assembly to determine the cause for failure. Oodle didn't arrange for any further inspection and instead relied on the

report's conclusion based on a limited inspection that didn't actually review the area of damage.

There is evidence, which hasn't been disputed by Oodle, that Mrs W took the car to a garage on 21 December 2018, and the knocking noise was found to derive from a faulty dual mass fly wheel. This was only a week after she entered into the hire purchase agreement. I consider it highly unlikely that any poor driving, if indeed there was poor driving, would have had an impact on the car part so quickly such that it was a week's driving that caused the part to become faulty. I consider it much more likely that the problem was already present at the point she acquired the car, given the extremely short space of time between acquiring it and taking it to a garage. I therefore find it most likely there was a fault with the dual mass fly wheel at the time the car was acquired, which meant it wasn't of satisfactory quality.

I turn now to the swirl flap. As explained by the investigator, swirl flaps should last the lifetime of the car regardless of someone's driving style. My research has shown that faulty swirl flaps is a known issue with cars of the same make as Mrs W's; they become brittle over time and snap off, causing damage to the engine. The report from Mrs W's garage recorded a missing swirl flap and suspected ingestion into the engine causing the damage. And I note the garage did dismantle the engine, and again the pictures taken, and its findings were sent to Oodle. Oodle hasn't disputed any of the information provided by the garage. As this is a known issue, and as the swirl flap had clearly come away, I find this is the likely cause of the engine damage and it seizing.

As this (and the faulty dual mass fly wheel) happened within six months of Mrs W acquiring the car, the onus is on Oodle to show the faults weren't present at the time the car was acquired – that is, that it was of satisfactory quality. I don't find the inspection carried out at Oodle's request persuasive when compared with the time frame involved, particularly in relation to the dual mass fly wheel, and information provided by Mrs W's garage – which did dismantle and examine parts of the engine. I'm not persuaded Oodle has provided sufficient evidence these faults or defects only arose after the car was acquired.

The Consumer Rights Act 2015 provides the right for customers to reject goods for a number of reasons, including if they aren't of satisfactory quality. There are two ways for a customer to reject goods, a right to reject within 30 days or a final right of reject if a repair or replacement doesn't result in the goods conforming to contract.

Although Mrs W said she contacted the dealership about the knocking noise following inspection by her garage, I've not seen any persuasive evidence in support of that. So I'm not persuaded she has done enough to exercise her 30 day right to reject the car.

As mentioned above, the Consumer Rights Act 2015 allows the customer a final right of reject if a repair or replacement doesn't result in the goods conforming to contract. I am required to take the law into account, but I'm also required to reach a fair and reasonable outcome in all the circumstances. I have borne in mind that this has been ongoing for some time, and that in order to repair the damage the car will require a new engine. I understand that such a job is labour intensive, which may mean it isn't repaired in a reasonable amount of time (something required under the Act). I'm aware that an engine replacement doesn't always result in a car conforming to contract. I also need to bear in mind that the car has also been replaced, as transport was required by Mrs W and her son. Therefore either repairing the engine or replacing the car will result in goods surplus to requirements.

In the particular circumstances of the complaint, I find the fairest remedy is to allow Mrs W to reject the goods without first allowing Oodle an opportunity to repair or replace the car, and treat the agreement as if it were never entered into. Ordinarily, where I am asking for repayments to be refunded, I would also ask for 8% simple interest to be paid on those repayments from the date they were paid to the date they are refunded. But I haven't required that here as I am mindful Mrs W and her son did have use of the car for three months.

### **my final decision**

For the reasons given, I uphold this complaint and require Oodle Financial Services Limited (trading as Oodle Car Finance) to:

- Allow Mrs W to reject the car.
- Arrange collection of the car at no cost to Mrs W.
- Treat the credit agreement as if it had never been entered into:
  - Refund Mrs W any deposit paid on entering the hire purchase agreement
  - Refund Mrs W all repayments and fees charges that have been made towards the agreement
  - Remove any information recorded on Mrs W's credit file in relation to the agreement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 14 October 2020.

Claire Hopkins  
**ombudsman**