

The complaint

Mr K is unhappy that a car supplied to him under a hire purchase agreement with Oodle Financial Services Limited was of an unsatisfactory quality.

Mr K has been represented during the claim and complaint process by Mrs K. For ease of reference, I will refer to any comments made, or any action taken, by either Mr K or Mrs K as “Mr K” throughout the decision.

What happened

In October 2022, Mr K was supplied with a used car through a hire purchase agreement with Oodle. The agreement was for £7,999 over 60 months; with an initial payment of £242.31, 58 monthly payments of £192.31 and a final payment of £242.31. At the time of supply, the car was around seven and a half years old and had done 75,410 miles (according to the MOT record for 12 October 2022).

Mr K took the car for its MOT test on 9 October 2023. The car failed due to the emissions exceeding the specified limit and the diesel particulate filter (DPF) emitting smoke. At the point of failure, the car had done 84,924 miles – 9,514 miles since it was supplied to Mr K.

The MOT tester has confirmed they added a diesel treatment, and asked Mr K to take the car on an extensive drive, keeping the engine revs high, so as to force a regeneration of the DPF. He did this, and the car passed its MOT on 10 October 2023.

Unhappy with the issues with the DPF, Mr K had the car inspected by a manufacturer’s approved garage. This inspection found issues with the fuel injectors, lower than normal oil pressure, an issue with the turbocharger that included missing bolts and clamps, and that the DPF sensor had been removed. This inspection cost Mr K £145.

The car was inspected by an independent engineer on 12 December 2023. At the time of inspection the car had done 86,468 miles – 11,058 miles since it was supplied to Mr K. The engineer said there was excess smoke from the exhaust, which suggested an underlying mechanical failure. The engineer also said that *“the ECU anti-theft device has been savagely removed at some point in the vehicle’s history, the rust present to the cut parts would suggest this has not occurred recently.”*

The engineer said *“the live data would suggest that the vehicles ECU has been remapped as the DPF difference is zero meaning the DPF would be like new, to obtain this with a used DPF the ECU would have been remapped, so the DPF pressure is not read by the ECU, this would also stop any regeneration of the DPF occurring.”*

The engineer concluded that, due to the rust present in an area free of water, dust, and road grime, the modifications to the ECU would’ve taken place *“some time ago”* and *“the vehicle is suffering from excessive crankcase pressure caused by a blockage of the DPF.”* So, given the modifications to the ECU *“to bypass the DPF regeneration system”* the engineer said *“the vehicle was not sold in an acceptable/durable condition.”*

Mr K complained to Oodle. However, because the car passed an MOT on 10 October 2023, they said the issues with the DPF weren't present when the car was supplied. And they didn't uphold his complaint. Unhappy with this response, Mr K brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator initially reviewed the evidence and said the report from the MOT tester saying the DPF was regenerated weren't consistent with the independent engineer's report. And, as Mr K had been able to drive the car for around 11,000 miles before the independent engineer inspected it, the investigator thought it likely that the DPF issue wasn't present when the car was supplied to Mr K. So, they didn't think Oodle needed to do anything more.

However, after receiving comments from Mr K about the forced regeneration of the DPF before the MOT passed, the investigator revised their view. They said that the forced regeneration wasn't inconsistent with the independent engineer's comments that the ECU had been remapped to bypass automatic regeneration of the DPF. And the evidence showed that modifications to the ECU had taken place before the car was supplied to Mr K.

So, the investigator didn't think the car was of a satisfactory quality when it was supplied, and Mr K should now be allowed to reject it. As such, the investigator said Oodle should take back the car, end the agreement, refund the inspection costs Mr K had incurred, refund the payments Mr K has made since December 2023 as this was when he stopped using the car, and pay him an additional £200 for the distress and inconvenience he'd suffered.

Oodle didn't agree with the investigator's opinion. They said the service records for 16 December 2021, 8 January 2022, and 14 January 2022 didn't show the ECU had been remapped, so they didn't think this remapping took place before the car was supplied. As such, they thought it was fair and reasonable that an independent engineer inspect the car to confirm when the remapping likely took place.

The investigator reminded Oodle that an independent engineer's report had already been carried out, which concluded that the remapping had happened before the car was supplied to Mr K. However, Oodle said the MOT tester had said they carried out a DPF regeneration, so they now considered that the MOT tester must have remapped the ECU so the car would pass an MOT. What's more, the independent engineer didn't say when the car was supplied to Mr K, and the supplying dealership denied remapping the ECU at the point of sale.

As Oodle didn't agree with the investigator's opinion, this matter has been passed to me 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. Mr K 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. But, where a fault is identified after the first six months, the CRA implies that it's for Mr K to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr K 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 is a fault with the car, nor that this has been caused by the remapping of the ECU to bypass the DPF regeneration. Before I address this, I think it's important to address DPF regeneration in general. According to the manufacturer of the car supplied to Mr K, DPF regeneration - where the heat within the exhaust system is used to burn off the build-up of carbon particles within the DPF itself - happens automatically after a specified distance, and within a specified heat range. This automatic process is controlled by the ECU.

However, if automatic regeneration doesn't happen, which is usually because the car is persistently driven over short distances so the specified heat range isn't reached, then a manual forced regeneration can take place. To achieve this, the car will need to be driven for a relatively long journey, at speeds exceeding 20mph, and with engine revs above 2000rpm.

Given this, I'm satisfied the automatic and manual DPF regeneration are two separate processes, and a manual forced regeneration doesn't imply that the automatic process has, or can, take place.

I've seen a copy of the independent engineer's report, dated 21 December 2023. The key elements of this report are detailed above, so I won't repeat them here. However, the engineer also confirmed their duty is to the courts, not to the person who instructed or paid for the report.

Oodle have stated that the report doesn't mention the date of supply, which is the case. But it does mention the supply mileage, which matches with the MOT mileage for 12 October 2022. What's more, as I've said, the engineer's duty is to the courts, and he is required to follow court procedure rules (CPR). So, for the engineer to conclude the remapping of the ECU happened before the car was supplied to Mr K, this implies that (even though it wasn't specifically stated on the report) the date of supply must have been known, otherwise it would not be possible to comply with the CPR. As such, I'm satisfied this report is reasonable to rely upon.

The independent engineer is clear that modification work has been done to the ECU, and this included remapping to bypass the automatic DPF regeneration process. While I've noted Oodle's comments, and evidence, to show the remapping didn't take place in December 2021 or January 2022, this doesn't prove that the remapping didn't take place at some other

point between March 2015 (when the car was first registered) and October 2022 (when it was supplied to Mr K).

Oodle have also said the ECU remapping was done by the MOT tester on 10 October 2023, so as to have the car pass an MOT. This view isn't supported by the evidence that a forced manual regeneration of the DPF took place on 9 or 10 October 2022. And, as I've said, a successful forced manual regeneration doesn't mean that the automatic regeneration process was working.

As such, based on the evidence I've seen, I'm satisfied the ECU was remapped before the car was supplied to Mr K, and this remapping bypassed the DPF automatic regeneration process. So, based on this, the car was of an unsatisfactory quality when it was supplied.

Mr K stopped using the car in late November 2022, and he supplied Oodle with the independent engineer's report that shows they/the supplying dealership were liable for any repairs. Despite this, Oodle didn't uphold the complaint.

Section 23(2) of the CRA 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 that Oodle have refused to accept the independent engineer's report, and therefore not taken any action to repair the car, it's arguable they have failed to comply with Section 23(2)(a) of the CRA. And, in these circumstances, Mr K should be able to reject the car.

Putting things right

The car has been off the road and undrivable since late November 2023 and since this date, Mr K wasn't supplied with a courtesy car. As such, he was paying for goods he was unable to use. As, for the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as Oodle failed to keep Mr K mobile; I'm satisfied they should refund the payments from December 2023.

Mr K has also provided evidence of the costs he's incurred in having the car inspected. And, given that the car wasn't of a satisfactory quality when supplied, I think it's only fair that Oodle also reimburse these costs.

Finally, it's clear that Mr K has been inconvenienced by what has happened, and the need to borrow a car off a family member to remain mobile. So, I think Oodle should compensate him for this. The investigator had recommended Oodle pay him £200, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, Oodle should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr K;
- remove any adverse entries relating to this agreement from Mr K's credit file;
- upon receipt of proof of payment, refund the manufacturer's approved garage and independent engineer inspection costs Mr K incurred in late 2023;
- refund the payments Mr K has made from December 2023 onwards;

- apply 8% simple yearly interest on the refunds, calculated from the date Mr K made the payments to the date of the refund[†]; and
- pay Mr K an additional £200 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If HM Revenue & Customs requires Oodle to take off tax from this interest, Oodle must give Mr K a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr K's complaint about Oodle Financial Services Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 6 June 2024.

Andrew Burford
Ombudsman