

The complaint

Mr T complains about the quality of a car supplied to him on finance by Oodle Financial Services Limited ('Oodle').

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my informal remit.

Oodle supplied Mr T a car on hire purchase in February 2022. However, Mr T complains that the car has had major and ongoing faults including:

- a leak at the top of the windscreen;
- faulty timing chain and EGR valve; and
- failed DPF.

A complaint about the quality of the car reached our service. Our investigator upheld it and said Oodle should pay for repairs which Mr T has already carried out – and pay for other repairs to fix the outstanding issues.

Oodle disagreed – in summary, it says the issues with the car are a result of reasonable wear and tear and do not render the car of unsatisfactory quality.

Mr T has since said he wants to reject the car as the ongoing windscreen leak has been making the car damp and mouldy inside.

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 informally.

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.

Where matters are unclear I make my decision on the balance of probabilities. For clarity when I refer to 'Expert A' I mean the expert who carried out the inspection in July 2023 and after the warranty company carried out its own inspection.

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 here) 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.

Oodle supplied Mr T with a second-hand car that was around 4 years old and had done around 40,000 miles at the point of supply. The dealer priced it at an amount that would be less than what a new or newer model with less mileage would cost. However, I note the price of £20,000 is still a significant amount of money to pay for a car. In the circumstances it is fair to say the car would not be expected to be as pristine as a new car, and there is a reasonable expectation that it might have suffered some wear and tear already. However, saying that, considering the age and mileage here I don’t think it would be reasonable to expect major faults for some time.

Before I move on to consider the more significant issues with the car it is worth noting that Expert A did point out an issue with the logo lettering not being affixed to the car properly and falling off. Mr T said this happened on driving the car home after the initial supply. The expert was satisfied that this was a fault and the responsibility of the supplier to fix. While I consider this a relatively minor issue I note the CRA also refers to minor defects being an aspect of the quality of the goods. In the particular circumstances here it appears that the lettering issue would also likely render the car of unsatisfactory quality. However, because of the relative severity of this compared to the other issues I have not focused on it in my decision. Nevertheless, it should be kept in mind when factoring in cumulatively what is fair and reasonable in the circumstances here.

Water leak

My starting point here is Mr T has provided credible testimony that just a few months after taking the car he noticed that the windscreen was not sealed properly at the top meaning rainwater was coming in. He says he reported this to the dealership at the time but it did not offer to resolve it. He says this has impacted the internal fabric of the car and also means that when it rains the steering wheel gets wet which is a safety concern.

The car allegedly had a 200 point check at the point of sale but there hasn’t been persuasive evidence this was carried out as it should have been. So it stands to reason that certain faults like this might have been overlooked at the point of supply. I also note the independent inspection of the car carried out about a year later by Expert A confirmed a fault in relation to the windscreen seal. In this report Expert A confirmed the fault was not likely due to anything Mr T had done (he mentioned the windscreen didn’t appear to have been replaced recently). The expert also confirmed this would be the supplier’s responsibility to fix.

Overall, I am satisfied from Mr T’s testimony and Expert A’s analysis that the particular sealing fault causing a leak was likely present at the point of sale. And would not be

something a reasonable person would expect, particularly due to the implications around safety, and the overall integrity of the inside of the car.

Timing chain and EGR valve

Expert A's findings on the timing chain and EGR valve are less clear – however, I note at the point the inspection was carried out these had already been repaired for £3,590.24. So I think it is fair to say there cannot be significant weight attached to the conclusions the expert has made on these issues as he wasn't able to examine their condition. However, and in any event although the report suggests the issues with these components could be due to wear and tear – it is by no means conclusive.

I note the warranty company carried out an expert report before the timing chain and EGR were repaired in which it indicated the issues with the timing chain had been caused by the problems with the DPF. This appears to be in contradiction to what Expert A suggested (i.e. the timing chain issues caused the DPF issues). So I find it difficult to place a lot of weight on this conclusion. I also note the report was carried out with a view to determining whether warranty coverage was in place. From what I can see the criteria the expert uses to approve a warranty claim appears to be in respect of 'sudden' failure which is different to the CRA factors including durability. While the warranty might exclude matters which have developed over time – this does not mean that components are reasonably durable in the circumstances under the CRA.

From what I can see it appears that a timing chain and EGR valve should last significantly longer than the roughly 50,000 miles they lasted in Mr T's case. And although he had covered several thousand miles in the car since supply I don't consider there to be persuasive evidence that he had used the car in such a way as to cause the issue. It seems that this expensive repair would be unexpected and unreasonable in the circumstances – noting the considerable cost of the car in the first place.

I also note Mr T's car was subject to recall notices at the time. It isn't entirely clear what these were for but the expert does appear to suggest these are resolved as they related to the engine parts like the timing chain and tensioner – which places considerable doubt as to the integrity of the original parts.

Overall and on balance I am satisfied the timing chain and EGR were not reasonably durable at the point of sale and render the car of unsatisfactory quality under the CRA. Therefore it would be something Oodle would be expected to put right at no cost to Mr T.

DPF fault

The expert report suggests the present need to replace the DPF might be wear and tear related. However, I don't think it is conclusive and points out this component would not normally be expected to fail at this age and mileage. It also suggests that its life could be adversely impacted by an 'engine timing' issue.

In my view it cannot be ruled out that the timing chain issues (which on balance I consider render the car of unsatisfactory quality) led to a premature failure of the DPF. Or that the DPF was inherently faulty in any event which led to its early failure. On balance, and in the circumstances here I don't consider it unfair to conclude the DPF is not reasonably durable and renders the car of unsatisfactory quality. Or that, in any event it has failed as a result of the inherent quality issues with the car around durability of the timing chain. It follows that Oodle would be responsible for putting this right in either case.

Putting things right

I have already explained that on balance I think Oodle is responsible for the timing chain/EGR and DPF issues. So looking at the remedies in the CRA I think this supports a case for fairly rejecting the vehicle. I say this because Oodle has already effectively had its one attempt at repair under the CRA in that Mr T has had the timing chain and EGR valve fixed only to then suffer a later issue with the DPF.

However, even putting these issues aside I think the water leak issue in isolation supports rejection of the car under the CRA. I think it is an inherent fault, and I am satisfied it was never addressed by the dealer or Oodle despite Mr T raising it. A repair might have been a practical approach at one stage, however, because the water leak was not remedied it has caused damage to the inside of the car including what appears to be a damp/mould issue (Mr T has provided pictures showing this). I think this makes a repair now a less practical option in any event. And I don't think that the ongoing damage is fairly Mr T's fault as it is clear he has struggled to afford to fix things and mitigate the issue. Even if I were to put aside the other issues, thinking about the CRA remedies for the leak and what is fair and reasonable a repair is not a fair approach. It would cause Mr T further significant inconvenience to remedy and I question how easy or proportionate it will be to solve now.

Overall, I consider it is fair to draw a line under the agreement now and allow Mr T to reject the car. In doing so Oodle should end the agreement and collect the car at no further cost to him ensuring there is no adverse data on his credit file in respect of the agreement.

I understand there is no deposit to reimburse. And Mr T has been driving the car and using it to date so my starting point is Oodle can retain the monthly rentals to date. However, I think it fair he gets back an amount to reflect the impaired use of the car. I know his use in some respects was impacted from an early stage (like the leak). Some more significant issues appeared to occur later on (from early May 2023). This isn't a science but I think 15% of the monthly payments Mr T made from 1 May 2023 would be a fair amount to refund. I think overall it reflects the issues with the ongoing leaking and the noise and poor running from the engine/DPF issues meaning that the car was just not functioning as it should have here.

Mr T should also get back the cost of the warranty he paid for on the car but Oodle can deduct from this a pro-rated amount based on the length of the agreement and the time Mr T has had the car to reflect that he benefited from warranty cover (even if it didn't pay his claims) during the period he was using the car.

Mr T has suffered distress and inconvenience due to the ongoing issues with the car – including having to take it in for repairs and not being able to sort the leak issue while worrying about the impact of the damp and mould on his family. I have thought about this and I think that Mr T has suffered more than the level of distress and inconvenience you would expect sorting out issues in everyday life. I think that Oodle could have assisted him better. Overall, looking at the guidance on awards we make on our website (and noting that I can only award for his distress and inconvenience rather than his family) I think that £200 is a fair award here.

Mr T appears to have paid out for an expert report in relation to this matter which he should get back.

Mr T appears to have paid for the timing chain and EGR repairs. He should get this back not only because I consider it likely part of the reason the car is not of satisfactory quality – but also because he won't benefit from these repairs in any significant way now he is handing the car back in respect of it not being of satisfactory quality.

I have seen a Visa debit receipt for the expert report for £276 and £3,590.24 for the timing chain and EGR repairs. However, it is not clear who paid for this. I am not able to award Mr T for losses suffered by a third party so I request that Mr T confirm that he is either the cardholder or that he has suffered the loss for these expenses because of shared household finances/joint account or some other arrangement where he has to reimburse a third party.

Mr T has also indicated a loan was taken out for the repair costs but has not provided further details of this. If he wants me to consider this he needs to provide further information including a copy of the loan agreement. My award here is based on Mr T paying for the repairs by debit card – but if I am satisfied he has also incurred additional expenses (like interest) through having to take finance to fund the repairs then I could award this too.

To be clear my award here is not to compensate Mr T for any alleged ongoing health issues from the car – I am not able to make an award for loss of amenity. If Mr T is intending to claim for this he should seek advice on the implications of accepting my decision as to any further action he may wish to take against any party going forward in respect of personal injury.

My provisional decision

I uphold this complaint and direct Oodle Financial Services Limited to:

- collect the car at no cost to Mr T and end the agreement ensuring there is no adverse data in respect of it on his credit file;*
- reimburse Mr T £3,590.24 for repairs and £276 for the expert report as long as he confirms he has suffered this loss in line with my comments above;*
- refund Mr T 15% of each monthly payment made from 1 May 2023;*
- pay a pro-rated refund to Mr T for the warranty in line with what I have explained above;*
- in respect of all refunds pay Mr T 8% simple yearly interest calculated from the date of payment to the date of settlement;*
- pay Mr T £200 for the distress and inconvenience experienced from this matter.*

Should Oodle consider it must deduct tax from the interest element of my award it should provide Mr T with a certificate of tax deduction.

Oodle and Mr T accepted my decision. In doing so Mr T clarified his financial position in respect of the out of pocket expenses for the expert report and repairs.

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:

In my provisional decision I asked Mr T to clarify the extent of his loss for the expert report and repairs. Mr T has explained that his partner paid for the expert report and took out the

loan for the repairs as he was having difficulty getting credit. However, he has explained that they live together and share finances and he is paying her back for these expenses over time. He has shown how he has transferred money to his partner in respect of the expert report for example. Overall, I am satisfied that these losses are fairly awardable to Mr T.

I mentioned in my provisional decision that production of the loan documentation for the repairs could result in me awarding interest costs. And Oodle has not disputed this. I see that the loan does attract interest of £826.20 which is likely to be less if the loan is settled early (as I expect it will be if Mr T accepts my decision and receives a lump sum for the repair costs). As I am satisfied the loan is a legitimate (and difficult to mitigate) consequential loss suffered by Mr T due to the repair costs arising from the breach of contract by Oodle it follows that any related interest costs of said loan would also be included in my redress. Therefore, once the loan is settled if Mr T is able to show evidence to Oodle of how much interest has been paid out on said loan then it should also reimburse him for this amount on top of the payment of £3,590.24 for the repairs funded by the loan.

I note that the amount of credit in respect of the loan (at £3,700) is slightly more than the £3,590.24 repair cost– therefore, any refund of interest can be pro-rated accordingly by Oodle if it wishes to do so (although I expect the amount of interest relating to the additional loan amount is likely minimal so it might choose not to carry out this calculation).

Putting things right

Oodle should put things right as set out below taking into account my directions above.

My final decision

I uphold this complaint and direct Oodle Financial Services Limited to:

- collect the car at no cost to Mr T and end the agreement ensuring there is no adverse data in respect of it on his credit file;
- reimburse Mr T £3,590.24 for repairs and £276 for the expert report;
- in accordance with my direction above reimburse Mr T the additional cost he will incur as a result of interest arising from the loan taken out for repairs;
- refund Mr T 15% of each monthly payment made from 1 May 2023;
- pay a pro-rated refund to Mr T for the warranty in line with what I have explained above;
- in respect of all refunds pay Mr T 8% simple yearly interest calculated from the date of payment to the date of settlement;
- pay Mr T £200 for the distress and inconvenience experienced from this matter.

Should Oodle consider it must deduct tax from the interest element of my award it should provide Mr T with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 7 August 2024.

Mark Lancod
Ombudsman