

The complaint

Mr B and Miss C complain about the quality of a car they acquired using a hire purchase agreement with Oodle Financial Services Limited (Oodle).

When I refer to what Mr B and Miss C has said and what Oodle have said, it should also be taken to include things said on their behalf.

What happened

In November 2021, Mr B and Miss C entered into a hire purchase agreement with Oodle to acquire a used car first registered in July 2017. At the time Mr B and Miss C acquired the car it had travelled approximately 20,915 miles. The cash price of the car was approximately £9,400. Mr B and Miss C made an advance payment of around £250. The total amount payable under the finance agreement was approximately £15,219. The agreement consisted of a first payment of around £298 followed by 58 monthly payments of around £248 and a final payment of approximately £298.

In December 2021, Mr B and Miss C contacted Oodle as they were unhappy with the quality of the car. Oodle didn't uphold their complaint and issued a final response on 11 January 2022. In this correspondence they said that, as part of their investigation, they have reviewed the MOT history and noted that the car has covered over 20,928 miles at the point of sale and passed its MOT in October 2021 with no advisories. So Oodle said that, considering this information, it's very unlikely the car had serious quality issues at the time of purchase.

Mr B and Miss C raised a second formal complaint regarding the quality of the car towards the end of January 2022. On 17 March 2022, Oodle responded to the complaint and summarised the events. In this correspondence, Oodle explained that Mr B and Miss C were unhappy because, after the dealership had replaced the timing chain, they said they were still experiencing issues with the engine management light coming on. But Oodle explained that later when they sent them a letter advising that Oodle had arranged for an independent inspection to be completed on the car in mid-March 2022, Mr B and Miss C confirmed that the engine management light was no longer illuminated, and that the issue had been resolved. So, they closed the complaint on this basis.

Later, Mr B and Miss C raised a third formal complaint towards the end of March 2022. And Oodle responded on 17 May 2022. In this correspondence they said that the independent inspection report commissioned concluded that there was inconclusive evidence to support the request to reject the car as it didn't have any current issues at the time.

Mr B and Miss C raised a fourth formal complaint in October 2022. Oodle issued a final response on 30 November 2022. In this response they said that, based on the information available to them, such as MOT records and taking into account the time the car has been in Mr B and Miss C's possession, it was reasonable to conclude that the current issues weren't present or developing at the point of sale. And they said, they have not been provided with evidence that the issue was present or developing at the point of supply, so they didn't uphold the complaint.

Mr B and Miss C were unhappy with this response, so they referred their complaint to our service.

Our investigator explained that the complaints which had the final responses issued on these dates:

- 11 January 2022;
- 17 March 2022; and
- 17 May 2022.

were outside of our rules for time reasons, and that Oodle haven't consented to our service considering Mr B and Miss C's complaint regarding these.

Regarding the complaint addressed by the final response letter issued on 30 November 2022, our investigator was of the opinion that there was not enough evidence to say that the fault that Mr B and Miss C are complaining about was present, and/or developing, at the point of supply. As such, the investigator didn't think it would be fair to ask Oodle to take any further action.

Mr B and Miss C disagreed with the investigator. So, the complaint has been passed to me to decide.

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.

I've also considered what I can and can't look at.

Final response letters issued in January 2022, March 2022, and 17 May 2022.

The Financial Conduct Authority, the regulator, sets out the rules specifying which complaints we can and can't look into. These rules include time limits for bringing complaints to our service. We generally can't look at complaints referred to our service more than six months after the date on which the business sent the consumer their final response letter.

Oodle issued a final response letter addressing Mr B and Miss C's complaint points on the following three dates:

- 11 January 2022;
- 17 March 2022; and
- 17 May 2022.

All of the above correspondence contained the appropriate information to make Mr B and Miss C aware that they could refer their complaint to our Service, but that they had to do so within six months of those dates. Based on this, if Mr B and Miss C were unhappy about any aspect of those final responses, they needed to refer their complaint within six months from the above relevant dates. Mr B and Miss C first contacted our service about their complaint in February 2023, so, they referred their complaint outside of the six-month time limit.

The rules allow us to look at complaints made out of time, if the failure to comply with the time limit was a result of exceptional circumstances. The rules don't specifically set out a definition of exceptional circumstances but indicate that an example of exceptional

circumstances might be where the complainant has been, or is, incapacitated. So, I consider this to be a high bar.

Mr B and Miss C said that they were going through a very difficult time due to Miss C's pregnancy. But I can see that Mr B and Miss C were corresponding with Oodle after they issued their final response, so I think they also could've made contact with our service. I do accept that they were dealing with a lot, but I don't consider this to be an exceptional circumstance in the context of the rules we must follow. I know they also mentioned that they were waiting for further evidence before contacting our service. But to raise a complaint at our service, all that Mr B and Miss C needed to do is to make a simple phone call, to send a short email/letter to our service, or to complete our online complaint form, which would've been enough to start the complaint process. They wouldn't even need to provide all the details during that first contact with our service. All they needed to do is just to make the initial contact to start the process or ask someone to do this on their behalf. Overall, from the evidence provided, I don't think Mr B and Miss C has demonstrated that they referred their complaint to our service out of time due to exceptional circumstances.

While I'm very sorry to hear about the issues Mr B and Miss C have described to our service, I don't think we can consider their complaint against Oodle regarding the issues raised in those three final responses mentioned above. So, for the reasons I've explained above, my decision is that we can't consider those complaint points because they were brought too late to our service.

Final response letter issued on 30 November 2022.

First, I should explain that, where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In considering what's fair and reasonable, I need to take into account the relevant rules, guidance, good industry practice, the law and, where appropriate, what would be considered to have been good industry practice at the relevant time. Mr B and Miss C acquired the car using a hire purchase agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements. Oodle is the supplier of the goods under this type of agreement and is responsible for dealing with complaints about their quality.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr B and Miss C entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and the cash price. The CRA 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.

In Mr B's and Miss C's case the car was used, with a total cash price of the car being approximately £9,400. It had covered around 20,915 miles and was more than four years old when they acquired it. So, it's reasonable to expect presence of some wear to it resulting from its age and usage. So, I'd have different expectations of it compared to a brand-new car. As with any car, there's an expectation that there will be ongoing maintenance and upkeep costs. There are parts that will naturally wear over time and it's reasonable to expect that these may need to be replaced. And in second-hand cars, it's more likely that parts will need to be replaced sooner or that they will be worn faster than in a brand-new car. So, Oodle would not generally be held responsible for anything that was due to normal wear and

tear whilst the car was in Mr B's and Miss C's possession. But given the age, mileage and price paid, I think it's fair to say that a reasonable person wouldn't expect anything significant to be wrong shortly after it was acquired.

Oodle said that based on the information available to them, such as MOT records and taking into account the time the car has been in Mr B's and Miss C's possession, it was reasonable to conclude that the current issues weren't present or developing at the point of sale. And they said they have not been provided with evidence that the issue was present or developing at the point of supply.

Mr B and Miss C, on the other hand, think that the car is faulty. They have said that the car's engine management light comes on intermittently and that the car is failing to gather speed, is shuddering, and is generally very noisy. And they have provided a recent diagnostic that says that there are issues with the intake camshaft position. But even if these faults are present on the car, I would still need to be, on balance, satisfied that these faults were present or developing at the point of supply and that they are such that they would make the car of unsatisfactory quality – taking into account the age and mileage of the car and the cash price.

I can see that in November 2022, only a few days after the fourth formal complaint was raised with Oodle, by Mr B and Miss C, the car passed its MOT. The car had travelled a total of around 30,523 miles at that time and it passed the MOT with one advisory, but this was not associated with the faults that are being raised by Mr B and Miss C. And the car had travelled almost 10,000 miles since point of supply. So based on all available evidence, I can't say that most likely there is a fault that was present or developing at the point of supply. I don't think Mr B and Miss C has given us enough to support this. So, while I sympathise with the situation Mr B and Miss C find themselves in, I don't think I can reasonably require Oodle to allow them to exercise their right to reject the car.

I know that Mr B and Miss C said that in November 2023 the car failed its MOT with advisories which they think are linked to the faults they are alleging were present or developing at the point of supply. But at the time of this MOT the car had travelled a total of 42,148 miles which is almost a further 12,000 miles since the year before. And, I've not been given enough evidence to be able to say that, most likely, there were faults that have made the car of unsatisfactory quality.

While I sympathise with Mr B and Miss C for the difficulties they are experiencing, based on all the available evidence I don't think it would be fair or reasonable to ask Oodle to do anything further regarding Mr B's and Miss C's complaint.

My final decision

For the reasons given above I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Miss C to accept or reject my decision before 9 January 2024.

Mike Kozbial
Ombudsman