

## **The complaint**

Mr C complains that Tandem Bank Limited rejected his Section 75 claim when he complained about the quality of a car.

## **What happened**

In May 2019 Mr C purchased a car from a garage and paid a deposit of £100 with his Tandem Bank credit card. The balance was paid by bank transfer.

Mr C arranged transportation of the car from the supplier. On delivery, Mr C discovered that there was a burn mark on the seat, only one key and an after-market modification to the exhaust. There was also damage to the bumper.

Mr C complained to the supplier. The supplier offered to compensate Mr C for the burn mark and the missing key. Mr C wasn't happy and asked to cancel the contract. The supplier said it would accept a return of the car but said it wanted to deduct £1000 for usage and the damage to the bumper, which it said had been caused during transportation to Mr C.

Mr C complained to Tandem. Tandem didn't uphold the complaint. It said the supplier had offered a partial refund, which it thought was fair.

Mr C remained unhappy and brought his complaint to this service.

Our investigator initially thought that the sale of the car was covered by the distance selling regulations. But she later changed her view and said that because this was a one-off transaction, the distance selling regulations didn't apply. The investigator considered the Consumer Rights Act 2015 and in particular whether the car was of satisfactory quality and as described but concluded that on the basis of the available information, it wasn't possible to say that the car wasn't as described or that there had been some other breach of contract.

Mr C didn't agree. He said the advert for the car didn't mention a modified suspension or exhaust system, and that neither of these modifications could be seen in the photos or videos.

## **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 thought about whether the distance selling regulations are applicable to this case. Having done so, I don't think they do on the basis that the sale was conducted as a one off and the supplier doesn't operate under an organised sales scheme.

The way in which this service approaches section 75 is to look at what happened and assess whether there are grounds for a successful claim. In considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under Section 75. Rather, in determining what's a fair and reasonable way to resolve Mr

C's complaint. I've taken Section 75 into account. But that doesn't mean I'm obliged to reach the same outcome as, for instance, a court might reach if Mr C pursued a claim for breach of contract.

I've thought about whether there's been a breach of contract. The relevant law says that a car must be of satisfactory quality, fit for purpose and as described. If this isn't the case, then a breach of contract can be said to have occurred.

I've focussed on whether the car was of satisfactory quality at the point of supply and in particular whether the car was as described. In doing so, I've had regard to the pre-sale information provided to Mr C including – amongst other things – the photos and videos and the email exchanges with the supplier.

Mr C has said that he was aware from the photographs which appeared with the advert that the car had a large exhaust. But he's made the point that there was no indication of the level of noise that this would emit. He's also said that the modification to the suspension wasn't referred to prior to the sale and that it wasn't possible to identify this from the photos. In relation to the burn on the upholstery and the damage to the bumper, Mr C has said the advert described the car as being in immaculate conditions. He's also said that the advert stated that there were two keys.

I can see from the email exchanges between Mr C and the supplier that Mr C was given the opportunity to inspect the car via video, photos and video calls. I can't be certain of exactly which videos and photos were viewed by Mr C but an email from the supplier dated 13 May 2019 shows that Mr C was happy to proceed with the purchase. Based on what I've seen I think Mr C was aware that the exhaust had been modified and ought reasonably to have expected that it would emit a different noise as a result. With regards to the suspension, and whilst I can't be certain of whether Mr C was aware of the modification or not, I'm unable to say that the suspension wasn't "as described", because the advert doesn't say that the car has standard suspension. Mr C has said that he didn't become aware of the modified suspension until some time after he'd received the car, so I'm not persuaded that there was a misrepresentation here, because there was no untrue statement of fact which induced Mr C to enter into the contract.

In relation to the burn marks and missing key, I've taken into account that this was a second-hand car, so I'd expect a degree of wear and tear. These are cosmetic issues and wouldn't warrant rejection of the car. I can see that the supplier offered to compensate Mr C for the burn marks and missing keys, which I think was a fair and reasonable resolution to this aspect of his complaint.

In relation to the damage to the bumper, it's disputed by the supplier that this damage was present at the point of sale. I've looked at all the available information including the photos and it does appear that there were some scratches at the point of sale. Based on what I've seen of the video made after Mr C received the car, the damage looks more extensive. On balance, I think it's likely that most of the damage was caused during transportation. Because Mr C arranged the transport, I'm unable to hold the business responsible for this.

It's clear that Mr C is disappointed with the car and I understand that he's since disposed of it. However, on the basis of the information I've seen, I'm unable to say that there's been a breach of contract or a misrepresentation. I don't think Tandem Bank handled the Section 75 claim unfairly or unreasonably.

### **My final decision**

My final decision is that I don't uphold the complaint,

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 2 February 2021.

Emma Davy  
**Ombudsman**