

The complaint

Miss A complains about the quality of a car she bought using credit from Tandem Bank Limited ("Tandem").

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on giving my reasons for my 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.

I know it will disappoint Miss A, but I agree with the investigator's opinion. Please let me explain.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made, in part or whole, with a credit card, as is the case here, it might be possible to recover the money paid through a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

When 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. I take section 75 into account when I think about what's a fair way to resolve the complaint, but I don't have to reach the same view as, for example, a court might reach if Miss A made a claim through them for breach of contract or misrepresentation.

The relevant legislation explains that if a fault occurs within the first six months we are to assume it was present at the point of supply, when the business were responsible for the car's quality, unless they can demonstrate otherwise. But if the fault happens after six months the onus is on the consumer to demonstrate the fault was present at the point of supply. I'm afraid I don't think Miss A has been able to do that.

Miss A says that the boot plug was missing in the car but by the time she noticed that she'd had the car for a little more than a year. I don't think Miss A has been able to provide sufficient evidence to suggest the boot plug hadn't been lost in the time she had ownership

of the vehicle and, as I've explained, the law puts the onus on her to do so.

I can also see that other issues were identified by the garage when Miss A took the car to them for an MOT in December 2020. There were, for instance, problems with a drive shaft, brake pipes and a wheel bearing. I've not seen that Miss A has complained specifically about those costs but, even if I'm wrong about that, Miss A would need to demonstrate that they were likely to have been faults that were present or developing at the point of supply.

It would also be necessary to demonstrate that these faults were not the result of normal wear and tear and, given that this car had already completed about 100,000 miles and was over 13 years old at the time of the MOT, I think a reasonable person would expect many of the parts to be reaching the end of their serviceable life and such problems would be fairly anticipated. I don't think it would be fair to suggest there is sufficient evidence this car was of unsatisfactory quality when supplied and I'm therefore not telling Tandem to take any further action.

My final decision

For the reasons I've given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 16 November 2021.

Phillip McMahon
Ombudsman