

The complaint

Mrs C is unhappy about the quality of a car supplied to her by Tandem Motor Finance Limited ("TMF") under a hire purchase agreement.

Mrs C has been represented. For clarity, I've only generally referred to Mrs C throughout this decision.

What happened

Mrs C acquired a used car under a 60 month hire purchase agreement with TMF in January 2023. Mrs C says she collected the car in February 2023. The car's mileage was around 70,000 at the time of supply and it cost around £14,000. Under the agreement, a deposit of £1,000 was paid and Mrs M was required to make 59 payments of £248.81, followed by a final payment of £294.81. Mrs M acquired the car from a dealership I'll refer to as "D".

Mrs C says around a week after acquiring the car, a diagnostic was carried out. She said fault codes were recorded, so she took the car back to D. Mrs C said D had the car for around a month and told her they had repaired all the faults. But she said faults were still showing up. Mrs C says D called her and told her they forgot to put something back on the car and asked her to return it to them. Mrs C complained to TMF in April 2023 and said the car had gearbox and turbo faults.

TMF issued its response to Mrs C's complaint in April 2023. It upheld Mrs C's complaint and refunded one monthly payment to represent the amounts she had spent on alternative travel whilst her car was with D. Mrs C accepted TMF's offer.

Later that month, Mrs C contacted TMF and said she was experiencing further issues with the car. She said a diagnostic machine was showing the car intermittently jerked in gears. She said she wanted the car repaired properly. TMF instructed an independent inspection company, that I'll refer to as "F", to inspect the car.

TMF issued its response to Mrs C's complaint in June 2023. TMF said F's report couldn't replicate the issue's Mrs C had complained about and so, TMF was unable to assist further.

Unhappy with this, Mrs C referred her complaint to this service. She reiterated her complaint and said she was unhappy with F's inspection and they failed to identify any faults. She also told us since she referred her complaint, the car was lurching and she had to get it recovered as it wasn't driving properly.

Our investigator looked into the complaint but didn't think TMF had acted unfairly. She said whilst Mrs C had told her there was still a fault with the car, she wasn't persuaded there was anything wrong with the car. She said F's report didn't demonstrate a fault with the car and it appeared any repairs carried out had resolved the issue Mrs C had originally complained about. So she didn't recommend that TMF took any further action.

Mrs C disagreed. She provided a diagnostic report from June 2023. This showed three issues for the power system and a tyre pressure warning. She also provided other images such as the car being towed and an undated image of the car's dashboard. Mrs C noted that

D had agreed to take the car back and had offered her another car. She also said F made up a false report and didn't use an expensive diagnostic machine.

Our investigator reviewed this information and said whilst the diagnostic report showed some fault codes, it didn't comment on the cause of these issues and whether these were linked to any previous repairs.

Mrs C said she had sent evidence to show the fault codes that were present before the car went to D were still present after the car was returned to D. She said its repair didn't fix anything and questioned whether a report from the manufacturer would be enough to prove things.

Our investigator said she would consider any further evidence Mrs D wanted to provide. But she said without this, her outcome would remain the same.

As Mrs C remains in disagreement, the case 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.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

I've read and considered the whole file and acknowledge that Mrs C has raised a number of different complaint points. I've concentrated 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. The rules of this service allow me to do this.

What I need to decide in this case is whether the car supplied to Mrs C was of satisfactory quality. If I don't think it was, I'll need to think what's fair, if anything, to put things right.

The finance agreement in this case is a regulated hire purchase agreement. So our service is able to consider complaints relating to it. TMF is the supplier of the car under this type of agreement and so, is responsible for dealing with a complaint about its quality.

The Consumer Rights Act 2015 ("CRA") covers hire purchase agreements. Under a hire purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

Mrs C acquired a car that was used – so there would be different expectations compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage and price. The CRA says the aspects of the quality of the goods includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In this case, Mrs C reported that shortly after acquiring the car, a diagnostic showed the car had stored fault codes. A copy of this diagnostic shows four fault codes appeared in relation to a lamp malfunction, clutch 2 opening unintentionally, air conditioning and central electrics. Mrs C said she took the car back to D who told her it had repaired all the faults. Whilst there is no supporting evidence to confirm what repairs were carried out by D or why they were carried out, I'm persuaded on balance that D did take the car back as TMF didn't dispute this when Mrs C complained to it. TMF also reimbursed Mrs C with one monthly repayment to reflect that she didn't have the car for a month whilst it was being repaired by D. So I'm satisfied it's more likely than not, D did take the car back to carry out some repairs.

Following this, Mrs C said she had another diagnostic test carried out in April 2023 and this reported that clutch 2 was opening unintentionally. She said she wanted D to repair the car or install a new clutch in it. TMF instructed F to carry out an inspection report.

Mrs C also provided a diagnostic report from June 2023. This showed a tire pressure warning, clutch 2 opening unintentionally, a databus error and a fault code relating to the turbocharger boost control position sensor. Mrs C said she had to get the car recovered in July 2023.

The presence of these fault codes demonstrated in the diagnostic reports suggest that there are some faults present with the car. So I'm persuaded that the car had some faults present when it was supplied to Mrs C. However, I now need to consider whether these faults make the car of unsatisfactory quality.

I've reviewed the report carried out by F in June 2023. At the time of the inspection, the mileage was around 72,500. So Mrs C had been able to travel around 2,500 miles in the car since it was supplied to her. F's report confirms that a road test was carried out over approximately four miles, with speeds of up to 40mph, with different load conditions, all in the transmission modes. F confirmed it couldn't replicate any of the issues Mrs C had complained about and provided a photograph to show there were no fault codes present.

It also said, *"This particular model of vehicle has a semiautomatic transmission which does suffer a slight delay in gear changes which is a characteristic of the type of transmission, and this was noted. As the clutches wear, the transmission delay will increase slightly, this can cause the warning lights to appear on the driver's panel periodically. This should be viewed as a characteristic of age-related wear, rather than a manufacturing defect, and noting our previous comments that the vehicle drove as expected for its age and mileage, we believe the car was fit for purpose and was sold in a satisfactory condition for a used vehicle of this age and mileage"*.

I've considered this carefully alongside all the information supplied by both Mrs C, her representative and TMF. Having done so, F's report confirms that it couldn't replicate the issues that Mrs C had complained about. It also provided a submission about the type of gearbox in the car and explained that it was normal for a delay to occur during gear changes. I note that Mrs C hasn't provided any supporting evidence of the faults she says are occurring such as a report from an independent third party. And fault codes may appear for a number of reasons on a diagnostic machine. The diagnostic report doesn't confirm why the faults are occurring or whether these faults make the car of unsatisfactory quality.

In addition, the car Mrs C acquired had covered around 70,000 miles and it was eight years old at the time of supply. Taking this into account, I don't think it's unreasonable that the transmission could have some age related wear and tear issues. And in light of this, whilst I accept there appear to be some faults with the car, I don't consider that these faults make the car of unsatisfactory quality. I consider that these faults are age related and wear and tear issues. And so on balance, I'm not persuaded that the car supplied to Mrs C by TMF was of unsatisfactory quality and it follows that TMF don't need to take any further action in respect of Mrs C's complaint.

My final decision

My final decision is that I don't uphold Mrs C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 2 April 2024.

Sonia Ahmed
Ombudsman