

The complaint

Mr P is unhappy that a car supplied to him under a hire purchase agreement with Tandem Motor Finance Ltd was of an unsatisfactory quality.

What happened

In May 2023, Mr P was supplied with a used car through a hire purchase agreement with Tandem. He paid an advance payment of £1,000 and the agreement was for £13,550 over 60 months; with 59 monthly payments of £302.17 and a final payment of £312.17. At the time of supply, the car was around eight and a half years old and had done 112,519 miles (according to the MOT record for 25 May 2023).

A few days after being supplied with the car, Mr P said that it needed oil. The car was inspected by the supplying dealership who said the PCV valve was replaced. The PCV valve is designed to allow air to escape the crankcase when the pressure gets too high, but when it malfunctions it can draw oil into the engine, burning it there instead. However, after a few more days and around 168 miles, the car again needed oil. Mr P complained to Tandem, who arranged for the car to be inspected by an independent engineer.

The car was inspected on 22 September 2023, at which point it had done 115,189 miles – around 2,600 miles since it was supplied to Mr P. Mr P explained to the engineer that he had had to put around 15 litres of oil in the car since the PCV valve had been replaced. The engineer found fault codes relating to the PCV valve, but a road test didn't identify anything unusual. The engineer said the fault codes could relate to the previous repair which hadn't been cleared, and that the expected oil consumption given the age and mileage of the car would be around 1.5 litres every 1,000 miles.

The engineer concluded that the need to replace a PCV valve was consistent with the age and mileage of the car, and that a 1,000 mile oil consumption test would be needed *“to calculate exactly how much oil this engine is using and compare results to the manufacturers acceptable tolerances for this type of vehicle.”*

In response to Mr P's complaint, Tandem said they had asked the supplying broker to clear the PCV fault code, and there was *“no evidence to show the vehicle is using any more oil than it would for a vehicle of it's [sic] age.”* So, they didn't uphold the complaint. Unhappy with this response, Mr P brought this matter to us for investigation.

Our investigator said there was evidence there was a fault with the car, and Mr P's experience of the amount of oil the car was using was in excess of what the independent engineer said was reasonable. The investigator thought this made the car of an unsatisfactory quality and, given that a repair had already been attempted, Mr P should now be allowed to reject the car.

Tandem didn't agree with the investigator's opinion and Mr P agreed to an oil consumption test being carried out. However, he said that the PCV fault code kept coming back every time it had been cleared. He also provided a report from a manufacturer approved garage

that said the PCV valve was faulty and needed replacement before any further diagnostic was carried out. This report cost Mr P £90.

Based on this report, the investigator revised their opinion. They said that the PCV valve had either been repaired or replaced by the supplying dealership, and the manufacturer approved garage's report shows this had failed and the fault with the car remained. So, Mr P should be allowed to reject the car.

The investigator also said that Tandem should refund Mr P the payments he made between 2 and 22 June 2023, as the car was off the road and no courtesy car was provided during this period; refund 15% of all the other payments Mr P has made, to reflect the impaired usage he's had with the car; reimburse the £90 Mr P paid for the manufacturer approved garage's report; and pay him an additional £150 for the distress and inconvenience he'd been caused.

Tandem didn't agree with the investigator's revised opinion, and they said the manufacturer approved garage had a vested interest as they wanted to repair the car, whereas the independent engineer didn't have this. So, they asked for this case to be passed to an ombudsman 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr P was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, Tandem are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless Tandem can show otherwise. So, if I thought the car was faulty when Mr P took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask Tandem to put this right.

Based on the evidence I've seen, I'm satisfied there is a fault with the car. The independent engineer has said there was a fault code relating to the PCV valve and recommended that an oil consumption test be carried out. The engineer also said that the car would be reasonably expected to use 1.5 litres of oil per 1,000 miles which, given the mileage the car

had done at the time of inspection, would mean that Mr P would be expected to have to put between three and four litres of oil into the car. However, the independent inspector said that Mr P had put 15 litres of oil into the car. I've noted this is excessive based on what the engineer said would be usual.

It's possible that the fault codes related to the PCV valve that the engineer noted hadn't been cleared when the independent inspection took place. However, the manufacturer's approved garage said this wasn't the case, and there was an actual issue with the PCV valve. It's worth reiterating that a faulty PCV valve would cause excessive oil consumption – the exact issue Mr P was experiencing.

While I've noted Tandem's concerns about the report from the manufacturer approved garage, I haven't seen anything to show me they were quoting for work that didn't need to be done, and their conclusions were the same as the independent engineer i.e., fault codes with the PCV valve and potentially excessive oil consumption. As such, I see no valid reason to dismiss this report and its contents as not to be relied upon.

Taking all this into consideration, I remain satisfied there was a fault with the car, relating to the PCV valve, that was most likely causing excessive oil consumption, and that this fault was present when the car was supplied to Mr P (otherwise the dealership wouldn't have attempted a repair shortly after the car was supplied).

Section 24(5) of the CRA says "*a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not confirm to contract.*" This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs i.e., it's not a single chance of repair for the dealership AND a single chance of repair for Tandem – the first attempted repair is the single chance at repair. What's more, if a different fault arises after a previous repair, even if those faults aren't related, the single chance of repair has already happened – it's not a single chance of repair per fault.

The CRA is clear that, if the single chance at repair fails, as was the case here, then Mr P has the right of rejection. However, this doesn't mean that Mr P is required to reject the car, and he can agree an alternative remedy i.e., further repairs to the car. However, as Mr P doesn't want a further attempt at repair, I'm therefore satisfied that Tandem should allow him to reject the car. They also need to take further action to put things right.

Putting things right

Mr P has been able to use the car while it's been in his possession. Because of this, I think it's only fair that he pays for this usage. However, the car was off the road being repaired between 2 and 22 June 2023, during which period Mr P wasn't supplied with a courtesy car. As such, he was paying for goods he was unable to use. As, for the reasons already stated, I'm satisfied the car was off the road due to it being of an unsatisfactory quality when it was supplied, and as Tandem failed to keep Mr P mobile; I'm satisfied they should refund the payments he made during this period.

Even though Mr P was able to use the car while it was in his possession, given the issues with the excessive oil consumption, I'm also satisfied that his usage and enjoyment of the car has been impaired. Because of this, I also think it's fair that Tandem refund some of the payments Mr P made. And I think 15% of the payments made fairly reflects the impaired use caused by the car not being of a satisfactory quality. For clarity, this refund includes the costs Mr P incurred in having to continually top the car up with oil.

Mr P has provided evidence of the costs he's incurred in having the car inspected by the manufacturer's approved garage. Given that the car wasn't of a satisfactory quality when supplied, I think it's only fair that Tandem reimburse these costs.

Finally, I think Mr P should be compensated for the distress and inconvenience he was caused by the above. But crucially, this compensation must be fair and reasonable to both parties, falling in line with our service's approach to awards of this nature, which is set out clearly on our website and so, is publicly available.

I note our investigator also recommended Tandem pay Mr P an additional £150, to recognise the distress and inconvenience he's been caused by the complaint. And having considered this recommendation, I think it's a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think this is significant enough to recognise the worry and upset Mr P would've felt by having to continually have to top the car up with oil. And I think it also fairly reflects the fact that a failed repair took place. So, this is a payment I'm directing Tandem to make

Therefore, Tandem should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr P;
- remove any adverse entries relating to this agreement from Mr P's credit file;
- refund the deposit Mr P paid (if any part of this deposit is made up of funds paid through a dealer contribution, Tandem is entitled to retain that proportion of the deposit);
- refund 100 % of the equivalent of the payments Mr P paid for 2 to 22 June 2022, when he was paying for goods he was unable to use;
- refund 15% of the remaining payments Mr P made during the lifetime of the agreement to reflect the impaired usage he had of the car;
- upon receipt of proof of payments, reimburse Mr P with the cost associated with having the car inspected by the manufacturer approved garage (I'm not asking Tandem to reimburse the costs of having to regularly top up the oil, as this is included in the impaired usage refund above);
- apply 8% simple yearly interest on the refunds, calculated from the date Mr P made the payments to the date of the refund[†]; and
- pay Mr P an additional £150 to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality.

[†]If HM Revenue & Customs requires Tandem to take off tax from this interest, Tandem must give Mr P a certificate showing how much tax they've taken off if he asks for one.

My final decision

For the reasons explained, I uphold Mr P's complaint about Tandem Motor Finance Ltd. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 11 December 2024.

Andrew Burford
Ombudsman