

The complaint

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

What happened

In December 2022, Mr B was supplied with a used car through a hire purchase agreement with Tandem. The agreement was for £6,795 over 60 months; with 59 monthly payments of £183.19 and a final payment of £193.19. At the time of supply, the car was around nine years old, and had done 77,142 miles (according to the MOT record for 2 December 2022).

Mr B said that he'd had problems with the car from shortly after it was supplied to him. A repair was attempted by the supplying dealership, but this was unsuccessful. The car broke down following this repair attempt, and Mr B said it cost him £2,500 to get it back on the road. Unhappy with what had happened, Mr B complained to Tandem.

Tandem arranged for the car to be inspected by an independent engineer. This inspection took place on 9 January 2024, at which point the car had done 82,413 miles – 5,271 miles since being supplied to Mr B. The engineer said the car had an ongoing and active transmission fault and had already had a repair that wasn't successful/durable. So, the engineer said the dealership were responsible for this.

Following this report, Tandem agreed that Mr B could reject the car and unwind the agreement. However, they didn't agree that they should refund the £2,500 Mr B had paid for repairs. Mr B didn't accept this offer, and he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said that Mr B had originally complained to Tandem in June 2023 about the delays in the dealership repairing the car, and they'd paid him £400 compensation for this. They also said that the unwinding of the agreement had been completed in March 2024. And Tandem did this in the knowledge that Mr B had agreed to a second repair on the car, but the part required to undertake this was on back order.

Given the circumstances, and the delays Mr B had suffered, the investigator said that allowing Mr B to reject the car was a fair and reasonable approach. And it wouldn't be reasonable for Tandem to now reverse this decision and insist the car was repaired.

With regards to the £2,500 repairs that Mr B had carried out in December 2023, the investigator said this was done because the car was in poor condition, with some issues present since supply, and an MOT was due. The terms Mr B agreed to required him to keep the car in good working order and condition, so arranging for these repairs was in line with Mr B's obligations of his agreement with Tandem.

While some of these repairs were for items that would be considered normal wear and tear, as the car supplied to Mr B wasn't of a satisfactory quality and given there was a longstanding and ongoing issue with the transmission; Mr B didn't gain any benefit from the wear and tear repairs he had done (and was obliged to do). So, the investigator thought

Tandem should cover the cost of these repairs (refund Mr B the amount he'd already paid towards these repairs and pay the outstanding balance).

The investigator said that Tandem had already refunded Mr B £1,396.60 of the payments he'd made (the equivalent to more than seven monthly payments) and retained the remaining £1,353.25. They thought this reflected the fair usage Mr B had had of the car, and that no further refund was needed. Finally, they thought that Tandem should pay Mr B an additional £200 compensation for the distress and inconvenience he'd suffered.

Tandem didn't agree with the investigator's opinion. They said that, as Mr B was happy to accept a second repair, *"this would change the outcome and the unwind that was previously offered ... initially we were not made aware [Mr B] accepted the second repair ... if we were, we would not have offered the unwind."*

Because Tandem didn't agree with the investigator's opinion, this matter was sent to an ombudsman for a decision. While this was waiting to be allocated to me, Tandem started chasing Mr B for the 'arrears' on his account – they were charging him 25p a mile for the mileage done on the car while it was in his possession. They also started to report that Mr B had missed payments to the credit reference agencies when he failed to pay this mileage charge. In addition to this, Mr B finished making payments for the repairs that had taken place in December 2023.

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 B 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 B 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 the car wasn't of a satisfactory quality when it was supplied to Mr B – this is confirmed by the independent engineer's report of 9 January

2024, and all parties have accepted the outcome of this report. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. Instead, I'll focus on what I think Tandem should do to put things right.

Putting things right

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. The CRA is clear that, if the single chance at repair fails – the independent engineer has confirmed this was the case here - then Mr B has the right of rejection. However, this doesn't mean that Mr B is required to reject the car, and he can agree an alternative remedy i.e., further repairs to the car.

Tandem offered Mr B the right of rejection, took back the car, and unwound the agreement. However, they are now saying that this should be reversed as Mr B agreed to a second repair, therefore waiving his right of rejection under the CRA. It's not clear if, in saying this, Tandem intend to return the car to Mr B, or just intend to add additional charges they expect Mr B to pay i.e., the additional mileage charge they are currently calling arrears and chasing him for and reporting to the credit reference agencies as missed payments.

Whether Tandem were aware that Mr B had agreed to additional repairs, and the evidence referred to in the investigator's opinion indicates they were, this doesn't alter the fact that the repair couldn't take place as the required part was on back order. I also haven't seen anything to show me that Mr B was ever provided with a likely date on which this part would become available, and the repair could take place.

Section 23(2) of the CRA states:

*If the consumer requires the trader to repair or replace the goods, the trader must –
(a) do so within a reasonable time and without significant inconvenience to the consumer*

Given that no reasonable timeframe for the second repair could be provided to Mr B, and he was therefore left with a faulty car, I'm satisfied that Tandem failed to comply with Section 23(2)(a) of the CRA. Therefore, regardless of whether Mr B agreed to a second repair, he should still be allowed to reject the car.

Mr B was in possession of the car from December 2022 to March 2024, a period of 15-months. And, while the car clearly had an ongoing transmission fault, Mr B was able to use it for the majority of that time, and travel over 5,000 miles. As such, I think it's fair that he pays for this usage. Tandem have already refunded Mr B the equivalent to around seven monthly payments, which I'm satisfied fairly compensates him for the time he was without use of the car, and for the impaired usage he had while it was in his possession, due to the ongoing fault. So, I don't think Tandem need to refund any further payments.

For clarity, the amount of the payments Tandem have retained are sufficient for the fair usage Mr B had of the car, and no further charges i.e. any mileage charge, should be applied or attempted to be collected.

Mr B has provided evidence of the costs he's incurred in repairing the car in December 2023, an amount he paid in instalments to the garage concerned. As explained above, Mr B was obliged to undertake these repairs to comply with the terms and conditions of the agreement he signed with Tandem. And, due to the ongoing fault and the return of the car to Tandem shortly after the repairs had taken place, Mr B received no benefit from these

repairs. But Tandem did – they received a car that had recently had extensive repairs and the sale price they did/will achieve would reflect these repairs. As such, I think it's only fair that Tandem reimburse Mr B the cost of these repairs.

Finally, I think Mr B should be compensated for the distress and inconvenience he has been 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.

Tandem have already paid Mr B £400 compensation, and our investigator recommended they pay him an additional £200, 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 B would've felt as a result of the initial delays in repairing the car, and these repairs being ultimately unsuccessful. And I think it also fairly reflects the worry and upset Mr B has been caused by Tandem reporting missed payments to the credit reference agencies after the agreement had been unwound. So, this is a payment I'm directing Tandem to make

Therefore, if they haven't already, Tandem should:

- treat the agreement as ended in March 2024, with nothing more to pay;
- remove any adverse entries relating to this agreement from Mr B's credit file;
- refund any deposit Mr B 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 any monthly or additional payments Mr B has paid since the agreement was initially unwound in March 2024;
- upon receipt of proof of when each instalment payment was made, reimburse Mr B for the cost of the repairs to the car in December 2023;
- apply 8% simple yearly interest on the refunds and reimbursements, calculated from the date Mr B made the payments to the date of the refund[†]; and
- pay Mr B an additional £200, bringing the total payment made to £600, to compensate him for the trouble and inconvenience caused by being supplied with a car that wasn't of a satisfactory quality (Tandem must pay this compensation within 28 days of the date on which we tell them Mr B accepts my final decision. If they pay later than this date, Tandem must also pay 8% simple yearly interest on the compensation from the deadline date for settlement to the date of payment[†]).

[†]If HM Revenue & Customs requires Tandem to take off tax from this interest, Tandem must give Mr B 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 B's complaint about Tandem Motor Finance Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 2 April 2025.

Andrew Burford

Ombudsman