

The complaint

Mrs O complains the car she acquired financed through a hire purchase agreement with Tandem Motor Finance Limited trading as Tandem ("Tandem") wasn't of satisfactory quality. She also complains she was mis-sold the car.

What happened

Mrs O acquired a used car financed through a hire purchase agreement she signed on 23 November 2023 with Tandem. Mrs O said she looked at various cars online but after a discussion with the broker she chose a particular model because she was advised that this car had a brand-new cam belt and water pump fitted.

Within three weeks of getting the car Mrs O called the dealer as there appeared to be a fault with the automatic gears. She said the car was entering limp mode and it had happened on a few occasions. The dealer said there was nothing wrong with the car. Mrs O said she was told "I couldn't just buy something and then take it back like you could with clothes". Mrs O also said there was no evidence of a new cam belt and water pump. So, she took the car to a third-party garage for a diagnostic test. The inspection noted a few faults, and a new clutch, flywheel and transmission unit were required. The garage also noted fault codes had been deleted on 23 and 24 November 2023 prior to her collecting the car. Mrs O contacted the dealer again. The dealer denied deleting codes.

The car went back to the dealer for repairs at the end of January. Mrs O described the problems she had with the customer service from the dealer and broker while trying to get the car fixed including issues with the warranty payment. Mrs O said she eventually picked up the car on 26 February. She didn't receive an invoice for work completed as she was told invoices were only issued on Fridays but was informed the clutch and flywheel had been replaced but the transmission unit was not replaced as it wasn't required. Mrs O said she tried to argue this with the dealer but was told it had carried out all work it was prepared to do on the car. The car continued to enter limp mode, so Mrs O raised a complaint with Tandem. She said the car had been mis-sold because of the condition of the water pump and the vehicle still required repairs.

Tandem commissioned an independent inspection of the vehicle. Initially Tandem did not uphold Mrs O's complaint. Mrs O disputed aspects of the independent report and a second report was issued. Tandem revised its final response and upheld the complaint. It offered £100 compensation. Mrs O wasn't satisfied and brought her complaint to this service.

Our investigator concluded the car wasn't mis-sold but that it wasn't of satisfactory quality at the point of purchase and that Mrs O should be allowed to reject it. Although Tandem had upheld the complaint in its second final response it wasn't clear in the response how the complaint should be resolved. Tandem didn't agree that Mrs O should be allowed to reject the car. It said it was happy to arrange for a repair. So, the complaint has come to me for a 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.

Having done so I agree with the conclusions reached by the investigator for the reasons I've outlined below.

I trust Mrs O won't take it as a discourtesy that I've condensed the complaint in the way I have. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the complaint.

In considering what is fair and reasonable I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards, codes of practice and (where appropriate) what I consider having been good industry practice at the relevant time. Mrs O's hire purchase agreement is a regulated consumer agreement and as such this service can consider complaints relating to it.

Misrepresentation

Generally speaking, a misrepresentation is when a false statement of fact has been made; and this false statement induces a customer to buy the goods. Any misrepresentation in these circumstances would be made by the dealer and not Tandem, but because Tandem provided the credit it is also liable for any misrepresentation by the dealer.

I've seen a copy of the text of the original advert for Mrs O's car. I can't see the cam belt and water pump noted on the advert. Mrs O has said that she was also told the car had a brand-new cam belt and water pump fitted at the time of looking at the car. I'm not disputing Mrs O's version of events, as I wasn't there to witness. But without any further evidence I'm not persuaded there was a false statement. Even if I were satisfied there was a false statement, I would need to be persuaded this induced Mrs O to buy this particular car. Again, I haven't seen any evidence of this. There are many reasons why Mrs O might buy this make and model of vehicle and this specific car, but I've not seen any evidence that a new cam belt and water pump would be the inducement to buy it. So, I'm not persuaded the car was misrepresented.

Satisfactory quality

Tandem, as the supplier of the car, was responsible for ensuring it was of satisfactory quality when it was supplied to Mrs O. Whether or not it was of satisfactory quality at that time will depend on several factors, including the age and mileage of the car and the price that was paid for it. The car was about seven and a half years old had been driven for 58,448 miles and had a price of £10,248. Satisfactory quality also covers durability which means that the components within the car must be durable and last a reasonable amount of time – but exactly how long that time is will also depend on several factors.

If I am to decide the car wasn't of satisfactory quality, I must be persuaded faults were present at the point of supply. Faults that developed afterwards are not relevant, moreover even if the faults reported were present at the point of supply this will not necessarily mean the car wasn't of satisfactory quality. This is because a second-hand car might be expected to have faults, for example tyres may be damaged from wear and tear but this will not necessarily mean the car is not of satisfactory quality.

When Mrs O first experienced a problem with the vehicle she took it to the dealer which said there wasn't a fault. Having no success at repair with the dealer she took it for an inspection

to a third-party garage. I've seen a copy of a quote from the garage dated 12 January 2024 for the replacement of the mechatronic unit and dual clutch. The dealer eventually agreed to look at the car again and replaced the clutch and flywheel. The invoice for this is dated 2 March. So I'm satisfied there was a fault with the car, and it was likely present at the point of delivery. I say this because Mrs O first reported a fault to the dealer within three weeks and the fault was diagnosed after only seven weeks.

The clutch and flywheel are subject to wear and tear and replacement. The timing of replacement does depend on driving style. Mrs O's car had been driven 58,448 miles at the time of purchase which is below the typical window for replacement (around 60,000 to 100,000 miles). When it was inspected by the third-party garage Mrs O had only driven the car 750 miles.

When Mrs O complained to Tandem it commissioned an independent inspection with a third party, S. The report concluded:

"The vehicle owner stated that the transmission slipped on occasions, this is a semiautomatic and has a slight delay in gear changes which we believe is consistent with the symptoms that the vehicle owner is describing. On completion of the road test, we found the following fault codes: P1725 fault code transmission output speed possible.

In this case, we would recommend that the transmission performance is monitored, and if issues persist, the next step would be to have the transmission clutches replaced, and the transmission clutches will require replacing within the next 2500 miles, we believe the sales agent should be responsible for the replacement costs the grounds that clutches had minimal future life expectancy at the point of sale."

Although the road test couldn't identify the clutch slippage the inspector said the symptoms described by the owner would suggest that the clutch is slipping under certain road conditions, and that this was consistent with the fault code stored in the vehicle's ECU.

The first report contained some errors, and S produced a revised report. In its email to Tandem S said it was initially under the impression that the vehicle had covered just over 50,000 miles at the point of sale, but documentary evidence confirmed the vehicle had covered 58,000 miles which would suggest the vehicle has covered under 2,500 miles from the date of purchase. It went on to say it

"had modified the report to take this information into account, and the suggestion in the report that the transmission should be monitored by the sales agent and any rectification costs borne by them on the grounds of durability."

I'm persuaded by this evidence and the statement that the sales agent should be responsible that there is likely a problem related to the transmission. I think it likely the problems with the clutch and flywheel were present at the point of delivery and this further issue may be related. So I'm persuaded the car wasn't sufficiently durable and wasn't of satisfactory quality when Mrs O acquired it.

Putting things right

It appears Mrs O did try to return the car within 30 days unsuccessfully, but the dealer subsequently repaired it. Tandem has accepted that there is a fault with the car and has offered to repair it again. It seems likely the initial repair has either failed or the transmission problem is a new issue. Either way the dealer has had the one chance at repair, and I think it now fair and reasonable that Mrs O is allowed to reject the car and this is her preference.

Mrs O didn't have use of the car while it was being repaired so I believe it fair and reasonable that Tandem refund rental payments she made between 31 January 2024 and 24 February 2004 (this excludes two days she was offered use of a courtesy car).

Mrs O was able to use the car from 24 November 2023 until 30 January 2024 and from 27 February 2024 until present, although the use of the car was compromised. The investigator recommended a 30% refund of the payments made between 24 November 2023 until 30 January 2024 and from 27 February until the date of settlement, and I agree this fairly reflects the impaired use.

Mrs O has explained that this situation has caused her distress and inconvenience including difficulty in dealing with the dealer and the broker. I agree that Tandem should pay a further £200 compensation in addition to the £100 it has already offered.

To put things right Tandem must:

- end the agreement with nothing further to pay.
- collect the car (if this has not been done already) at no further cost to Mrs O.
- refund payments she made between 31 January 2024 and 24 February 2024 (this excludes two days she was offered use of a courtesy car).
- refund 30% of the payments made between 24 November 2023 until 30 January 2024 and from 27 February until the date of settlement.
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement.
- pay Mrs O £100 Tandem originally offered if it hasn't done so already.
- pay a further amount of £200 for any distress and inconvenience that's been caused due to the faulty goods.
- remove any adverse information from Mrs O's credit file in relation to the agreement.

My final decision

My final decision is I uphold this complaint and Tandem Motor Finance Limited trading as Tandem must put things right as set out above

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 2 July 2025.

Maxine Sutton
Ombudsman