

The complaint

Mr O complains that a car acquired with finance from Tandem Motor Finance Limited (“TMF”) wasn’t of satisfactory quality.

What happened

In June 2023 Mr O was supplied with a car and entered into a hire purchase agreement with TMF. At the point of supply the car was around three years old and had covered around 54,760 miles.

Mr O experienced some issues with the car. In mid July 2023 Mr O noticed a whining sound and a transmission failure warning illuminated. The car stopped in the road and then continued to drive.

Mr O took the car to a local main dealer for repairs under warranty. The repairs were completed in August 2023. The garage advised Mr O that the fault had occurred due to corrosion on the onboard charging port.

Mr O collected the car on 8 August 2023. The following day the same fault occurred. Mr O contacted the main dealer who had repaired the car. The main dealer advised Mr O that the supplying dealer had carried out work relating to the same issue in June 2023 (prior to supplying the car to Mr O) and that Mr O should return the car there.

Mr O contacted the supplying dealer. It arranged to collect the car on 15 August 2023 but advised Mr O that it didn’t know how long it would take for the car to be repaired. Mr O expressed his concerns that he hadn’t been able to work since the beginning of August and that without the car he had no source of income.

Mr O raised a complaint with TMF. He asked to reject the car. TMF wasn’t able to respond to Mr O’s complaint within 8 weeks so he brought his complaint to this service.

TMF issued a final response in December 2023. It upheld the complaint and agreed to unwind the agreement and pay £100 compensation for the delay in responding to the complaint. TMF said the delays were due to a dispute between itself, the broker and the supplying dealer with regards to the commercial purpose for which Mr O was using the vehicle, which was against the terms and conditions of the agreement.

Mr O wasn’t happy with the level of compensation proposed.

Our investigator upheld the complaint. She said there was no dispute that the car had a fault. She said that because the supplying dealer had agreed a rejection, the only issue to determine was compensation. The investigator said that the situation could’ve been resolved sooner than it was, because Mr O notified TMF of the issues with the car in August 2023 but it wasn’t until December 2023 that a resolution was reached. The investigator said that the compensation offered to Mr O didn’t reflect the financial distress caused to Mr O as a result of being without the use of the car. The investigator said that TMF should refund Mr O’s monthly repayments (save for the first month to reflect usage), refund the deposit, refund Mr

O's insurance and tax costs for the time he was without the car and pay further compensation of £300.

TMF didn't agree. It said it didn't agree with the resolution because Mr O had been in breach of the terms and conditions of the agreement in using the vehicle for commercial purposes.

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.

The Supply of Goods Act 1979 is relevant to this complaint. This says that the car should be of satisfactory quality when supplied. Cars are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account things like the age and mileage of the car and the price paid.

In its response to Mr O's complaint, TMF said it had been pushing for an unwind on the agreement with the broker, and that the reason for the delay was in terms of the purpose Mr O had purchased the vehicle for, which was commercial use. TMF said that this went against the terms and conditions as it you could not purchase a vehicle for commercial purposes. TMF said there was resistance from the supplying dealer to unwind the agreement due to the breach of the terms and conditions. TMF said that the broker collected the vehicle from the dealership to have it inspected and following this, all parties agreed for the unwind to go ahead.

Because TMF has agreed to accept a rejection of the vehicle and unwind the agreement, I don't propose to comment further on the quality of the car. Instead, I'll focus on whether the redress offered to Mr O is fair and reasonable.

Mr O experienced the fault with the car within around one month after the point of supply. The car was repaired under warranty in early August 2023 but the fault occurred again the day after the car was returned to Mr O. Following this the car was returned to the supplying dealer in mid August 2023 and Mr O has been without use of the car since then.

Mr O has made repeated requests to reject the car. I understand that TMF had to resolve some issues between the broker and the supplying dealer before a rejection was agreed, but I think the length of time it took to resolve things was unreasonable. This delay has impacted on Mr O because he relies on the car to earn a living.

When a rejection is accepted, this service would generally expect the business to refund any deposit paid and refund monthly repayments less a deduction for usage. In this case, Mr O hasn't had very much use of the car, because the fault occurred around a month after he got the car and the car has been in the possession of the supplying dealer since mid August.

I don't think its fair that Mr O should have to pay monthly payments for a car which he's been unable to use. So I think its fair to ask TMS to refund the deposit and all but the first months monthly repayments.

Mr O has asked this service to consider his loss of earnings as part of the redress for his complaint. I appreciate that Mr O used the car for commercial purposes as a taxi driver. However, because Mr O has only recently become self employed, he hasn't been able to provide details of his previous income to demonstrate his lost earnings. So it isn't possible to consider this. Its also fair to say that this service would expect a consumer to take steps to mitigate financial losses by (for instance) hiring an alternative vehicle. Mr O has told this service that he couldn't afford to hire an alternative vehicle because he was still paying for

the faulty vehicle. Taking this into account, I think the fairest way to resolve this is to ask TMS to refund most of the monthly payments, as I've said above.

Mr O has incurred some costs in relation to the car which are essentially costs thrown away as he's been unable to use the car. These include the costs of tax and insurance. I think it's fair to ask TMF to refund these costs for the period that Mr O was unable to use the car. Once TMF confirmed that it would unwind the agreement (which was in December 2023) I would have expected Mr O to mitigate his losses by cancelling his tax and insurance at that point. So, I'll be asking TMF to refund these costs up to December 2023.

It's clear that Mr O has been caused significant distress and inconvenience as a result of being supplied with a vehicle which wasn't of satisfactory quality. As I've said above, it's taken an unreasonable length of time to resolve this complaint. I think it's fair to ask TMF to pay compensation for this. I think the sum of £400 (£300 in addition to the £100 offered) is fair and reasonable.

Putting things right

To put things right, Tandem Motor Finance Limited must:

End the agreement with nothing further to pay

Refund the deposit of £2,390

Refund all monthly repayments made by Mr O save for the first monthly payment (to reflect usage)

Refund Mr O's tax and insurance costs up to December 2023 (upon Mr O providing proof of payment of these costs)

Pay 8% simple interest on all amounts refunded calculated from the date of payment to the date of settlement

Pay total compensation of £400 for distress and inconvenience

Remove any adverse information in relation to this agreement from Mr O's credit file

My final decision

My final decision is that I uphold the complaint. Tandem Motor Finance Limited must take the steps I've set out above.

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

Emma Davy
Ombudsman