

The complaint

Mr S complains that a car acquired with finance from FCE Bank Plc wasn't of satisfactory quality.

What happened

In February 2018 Mr S was supplied with a car and entered into a finance agreement with FCE. At the point of supply the car had covered around 5200 miles. The car was refinanced in February 2021 and the agreement was extended for a further two years. At the point of refinance the car had covered around 33,000 miles.

In January 2022 the car's engine failed. The car was recovered to the supplying dealer who carried out a vehicle health check and found that the cambelt had disintegrated. It also found that the oil pressure light was illuminated.

At the point of engine failure the car had covered around 38,215 miles.

Mr S complained to FCE. FCE didn't uphold the complaint. It said that the car was out of warranty and that because the fault had occurred four years after the point of supply, it was up to Mr S to provide evidence to show that the car was faulty at the point of supply.

Mr S wasn't happy with the response and complained to this service.

Our investigator upheld the complaint. She said that the expected lifespan of a cambelt on this vehicle was between 100,000 and 144,000 miles and that because the car had only covered 38,215 miles at the time the cambelt disintegrated and the engine failed, she thought the part had failed prematurely and wasn't sufficiently durable, which made the car of unsatisfactory quality. The investigator said that because repairs were likely to cost more than the car was worth, she thought Mr S should be allowed to reject the car.

FCE didn't agree. It said the fault had occurred four years after the inception of the finance agreement and that there was no evidence that the car was faulty at the point of supply. FCE said it was unreasonable to allow Mr S to reject the car and said it would have been fair to ask FCE to cover the cost of repairs. FCE questioned whether the work carried out on the car by Mr S could've caused or contributed to the engine failure and asked whether any parts used by Mr S met the manufacturers specifications. FCE suggested that Mr S should cover the costs of repair himself and, if a subsequent investigation by the dealership deemed the car to have been faulty at the point of supply, FCE would reimburse Mr S for the costs of repair.

Mr S wasn't willing to accept FCE's suggestion that he paid for repairs. He said the supplying dealer had advised him that the car's engine was no longer viable and that it hadn't been reassembled following the vehicle health check.

The complaint has been passed to me for review.

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 Consumer Rights Act 2015 is relevant to this complaint. This says that goods must 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 such as the age and mileage of the car and the price paid. The legislation says that the quality of the goods includes their general state and condition, and other things like fitness for purpose, appearance and finish, freedom from minor defects, safety and durability.

The car supplied to Mr S was second hand at the point of supply. I'd expect a second hand car to have a degree of wear and tear and to require more repairs and maintenance than a brand new car. So, in order to uphold this complaint, I would need to be satisfied that there was a fault with the car at the point of supply which made it of unsatisfactory quality, as opposed to a fault which occurred due to general wear and tear.

Under the relevant legislation, when a car isn't of satisfactory quality in the first six months, it's assumed that it wasn't of satisfactory quality at the point of supply, unless shown otherwise. After six months, the burden of proof is reversed and it's up to the consumer to show that the car wasn't of satisfactory quality at the point of supply.

I've reviewed all of the available evidence about the issues with the car. Based on what I've seen, I'm satisfied that there's a fault with the car. I say this because the engine failed in January 2022 and a subsequent vehicle health check confirmed that the cambelt has disintegrated.

Just because there was a fault doesn't mean that the car wasn't of satisfactory quality when it was supplied. At the point when the engine failed, the car was around six years old and had covered around 38,215 miles. As I've already said, I'd expect a car of this age and mileage to have a degree of wear and tear. The vehicle health check found that the cambelt had disintegrated but didn't comment on what caused this or why it had happened.

Given that the cambelt is an integral part of the engine, I don't think it's likely that the cambelt had started to disintegrate at the point of supply. However, I need to consider the durability of the cambelt here. This is because durability is an aspect of satisfactory quality. A cambelt on the make and model of the car supplied to Mr S should be expected to last for over 100,000 miles according to the manufacturer's guidance. In this case, the cambelt has failed at a point when the car has only covered 38,215 miles. So, I think it's fair to say that the cambelt failed much sooner than a reasonable person would expect. Taking this into account, I don't think the cambelt was sufficiently durable. This makes the car of unsatisfactory quality.

I've taken all of the points made by FCE into consideration. FCE has said that the fact that the oil pressure light was illuminated doesn't mean that the car has a fault. I agree. However, I'm satisfied that the car has a fault, not because of the oil light, but because the cambelt has disintegrated and the engine has failed.

FCE has said that there's no evidence that the car was faulty at the point of supply. My decision is based on durability here. The car isn't of satisfactory quality because a part has failed prematurely.

FCE has said that it would've been fair to offer it the opportunity to repair the car. The relevant legislation gives the business one opportunity to repair a fault. However, in this case, the supplying dealer has dismantled the engine and has told Mr S that the engine is no longer viable. So, it seems likely that any repairs will involve replacing the engine. This is likely to cost more than the car is worth. In these circumstances, I don't think it would be fair

to ask FCE to carry out repairs. I'm of the view that the fairest resolution here is to allow Mr S to reject the car.

FCE has expressed concern that Mr S carried out some work on the car himself. Mr S has told this service that he carried out an oil change and changed the oil filter during lockdown, when he was unable to book the car in for a service. Mr S has a relevant qualification in motor mechanics. FCE has made the point that the use of parts which don't meet the manufacturer's specifications could've contributed to the engine failure. This service asked Mr S to comment on this and he's confirmed that he followed the manufacturers requirements as set out in the vehicles handbook and used parts with the same part numbers as the parts he was replacing.

I've got no reason to doubt Mr S's testimony. In any event, there's no evidence to suggest that the engine failure was caused by an external factor such as a non-manufacturers specification part. I think it's likely that the supplying dealer would've identified and commented on this as part of the vehicle health check if this had been the case.

FCE has said that Mr S refused to allow the supplying dealer to investigate the cause of the fault further and maintains that there's no evidence of a fault. I've already explained why I don't think the cambelt was sufficiently durable. A reasonable person wouldn't expect a cambelt to fail at this level of mileage. As to identifying the cause of the fault, once the vehicle health check found that the cambelt has disintegrated, I think it would have been reasonable for FCE to arrange an independent inspection if it wanted to investigate further. The car was with the supplying dealer for several months and I think FCE has had reasonable opportunity to arrange an inspection.

Based on the information I've seen, I'm of the view that the cambelt wasn't sufficiently durable and that the car was therefore not of satisfactory quality. FCE need to take steps to put things right.

Putting things right

To put things right, FCE should:

End the agreement with nothing further to pay

Arrange for the car to be collected at no cost to Mr S

Refund all rental payments made by Mr S since 24 January 2022

Refund the costs of recovery of £360.93

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

Pay compensation of £275 for distress and inconvenience

Remove any adverse information relating to the agreement from Mr S's credit file

My final decision

My final decision is that I uphold the complaint. FCE Bank Plc must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or

reject my decision before 2 March 2023.

Emma Davy
Ombudsman