

## **The complaint**

Mrs N is unhappy with the quality of the car she acquired under a hire purchase agreement with FCE Bank Plc trading as Ford Credit Europe (FCE).

## **What happened**

In August 2017, Mrs N entered into a hire purchase agreement with FCE to acquire a brand-new car. The cash price of the car was around £18,779 and the total amount payable was approximately £19,846. Mrs N paid a deposit of £1,500. The duration of the agreement was set at 37 months, consisting of one payment of about £330 followed by 35 monthly payments of around £320. And a final repayment of around £6,822.

Mrs N has said that in April 2022, her car suddenly lost power whilst driving, so she pulled over and called for a roadside assistance mechanic. When the mechanic arrived, she said he checked the engine and explained that it was a manufacturer fault he had seen recently with cars of the same make and model. She said he told her that the reason for her engine seizing was because the cambelt used in her car is referred to as a 'Wetbelt'. She said, he also told her that these belts are immersed in engine oil to produce favourable emissions ratings, but that the rubber used for the belts degrades over time, causing the fibres to get stuck in the oil pick-up lines and clogging the filter. This, in turn, causes the engine to be starved of oil and to seize. Mrs N said that at that time the car had travelled around 46,000 miles.

Mrs N said that when she was communicating with the dealership she was told, that as the issue was due to a manufacturing fault, that the dealership would speak to the manufacturer to see if they were willing to offer a goodwill gesture. But in May 2022 she was advised that 'late servicing likely contributed to the issue' so they would not be reviewing the case any further. She says she has been told that the car needs a new engine as it has ceased when the cambelt broke and that the cost would be approximately £7,000. As she was unhappy with this, she complained to FCE.

In July 2022 FCE responded to Mrs N's complaint about the quality of the car. In this correspondence they said that the car is not in a roadworthy condition as the cambelt is broken and the car requires a new engine. They said the dealership submitted a request to the manufacturer of the car to cover the cost of the repairs, but that this was declined because the car was not maintained in line with the terms and conditions.

They elaborated by saying that the car is due a service every 12 months or 12,500 miles. However, they said, when Mrs N completed the first service it was around 1,000 miles overdue and on the second service, the car had travelled 3,500 miles over. So, they said that, as the car had not been maintained in line with the manufacturer's recommendation, the warranty was void and that she would be liable to cover the cost of the repairs. They also said that the current issue with the car was a fault that appeared over time rather than a fault being present at the point of sale, and as such they are unable to accept her request to cover the cost of the repairs. They also said that the service team at the dealership were operating during the national lockdown. As such, they said that Mrs N had the opportunity to make an appointment to complete the annual service on time.

Mrs N was unhappy with FCE's response, so one of the investigators at our service looked at her complaint.

Our investigator thought there was enough information for him to say that, on the balance of probabilities, the car was not of satisfactory quality when it was supplied to Mrs N – particularly, that it wasn't reasonably durable.

FCE disagreed with the investigator, so the complaint has been passed to me to make a final 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.

In considering what is fair and reasonable, I need to take into account the relevant rules, guidance, the law, and, where appropriate, what would be considered to have been good industry practice at the relevant time. Mrs N acquired the car under a hire purchase agreement, which is a regulated consumer credit agreement. Our service can look at these sorts of agreements.

#### Satisfactory Quality

FCE is the supplier of goods under this hire purchase agreement and is responsible for dealing with complaints about their quality. The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mrs N entered into. Under the agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory – taking into account the description of the goods, the price paid, and other relevant circumstances. I think in this case those relevant circumstances include, but are not limited to, the age and mileage of the car and its cash price. The CRA says that the quality of the goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

In Mrs N's case the car was brand new, with a cash price of approximately £18,779. So, I think a reasonable person would expect the car to be of higher quality than a previously used car. I think it would also be reasonable to expect the car to last a considerable period of time before any problems occurred and be free from defects for a considerable time period.

FCE said that just because something has gone wrong doesn't always mean the goods are not of satisfactory quality at the point they were supplied. They said the fault appeared after five years and 46,000 miles, so they think that a reasonable person would expect something to go wrong after owning the car for such a long time, which is why consumers have the option to purchase an extended warranty. They have also quoted a motoring company website which states that a cambelt usually needs to be replaced more than once over the course of a car's lifetime, and that manufacturers will usually recommend replacing the cambelt after a set number of years or miles, which could be anywhere from 40,000 to 100,000 miles or 4+ years. So, FCE are of the opinion that, as Mrs N's car was over four years old and had travelled over 40,000 miles, it isn't unreasonable for the cambelt to have failed.

I've taken this into consideration, but I also considered that the above-mentioned website also states that it depends on the make and model of the car. And when our investigator

called the manufacturer of Mrs N's car and provided them with the vehicle identification number, they told our service that the cambelt on the car in question should be changed every 10 years or every 144,000 miles, whichever comes first. They explained that this is a recommendation and not a guarantee, but I think that a reasonable person wouldn't expect to need to replace an engine that has ceased due to a fault with the cambelt on a car that is half the age and has travelled less than a third of the miles. So, it's also reasonable to take into account the nature of the problem and whether it's fair to say the car was reasonably durable. I understand that a cambelt may experience wear over time, but considering the circumstances of this case, I think most likely, a reasonable length of time for a car not to need an engine replacement would be more than 46,000 miles or five years. I think needing to replace an engine is a significant problem to arise on a car and it can be very expensive to put right. Given how relatively low the overall mileage of the car was, I do not think this was a cost a reasonable person would expect to bear, or a fault that would be expected to arise in the time frame Mrs N has had the car.

I know that FCE also said that when Mrs N completed the first service, it was 1,000 miles overdue and on the second service, the car had travelled 3,500 miles more than it should've. So, they said that the car had not been maintained in line with the manufacturer's recommendation. I do not dispute that this would invalidate any warranty on the policy but in this decision, I'm assessing whether the car was of satisfactory quality. In thinking about this, I'm considering whether the consumer's actions have caused the premature engine failure.

FCE have provided notes from the garage which explain that, as the belt runs in the engine oil, it's critical that the oil is replaced according to the manufacturer's specification as excessive carbon build-up in the engine oil can cause damage to the belt and reduce its lifespan. So, I've taken this into consideration. But I have also taken into consideration that both services in question were still carried out within a reasonable timescale – i.e. the number of miles overdue weren't significant. And I'm not persuaded that, on balance, it's likely the delays in question which caused the cambelt to fail prematurely. Especially that the car manufacturer recommends it be changed every 10 years or every 144,000 miles, whichever comes first, and the car at the time was half that age and had travelled less than a third of the recommended miles.

Considering the above, combined with the age and mileage of the car, I still do not think a reasonable person would consider it reasonable for the car to need a new engine and to have such a big expense so soon. So, I do not think the car, including its cambelt, was sufficiently durable. For this reason, I do not think the car was of satisfactory quality.

The CRA sets out that, where the supplied goods are not of satisfactory quality, the consumer can require the supplier (FCE in this case) to fix any faults. And, as the car wasn't of satisfactory quality, Mrs N didn't have access to it since April 2022 when the cambelt fault occurred. As such, she had to rely on public transport and taxis. So, I think it's only fair that she receives a refund for the payments she has made during this time.

Mrs N has understandably gone through a degree of inconvenience and stress while she was without the car, including having to use to use public transport and arranging taxi services, so considering the circumstances I think it is fair that FCE pay her £200 compensation for the distress and inconvenience caused.

### **My final decision**

For the reasons given above, I uphold this complaint and direct FCE Bank Plc trading as Ford Credit Europe to:

1. Repair the car;

2. Refund any payments Mrs N made, as stated above, to cover the loss of use of the car from when it broke in April 2022 until it's fixed;
3. Add 8% simple interest per year to point '2' above: from the date of each payment to the date of settlement;
4. Pay Mrs N £200 compensation for the distress and inconvenience caused;
5. Remove any adverse infarction that may have been recorded on Mrs N's credit file from April 2022 onwards.

If FCE Bank Plc trading as Ford Credit Europe thinks tax should be deducted from the interest element of my award, then it should provide Mrs N with a tax deduction certificate so she can reclaim it, if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 14 February 2023.

Mike Kozbial  
**Ombudsman**