

The complaint

Mr B complains that a car he acquired which was financed by a hire purchase agreement with CA AUTO FINANCE UK LTD (“CA Auto”) wasn’t of satisfactory quality.

What happened

In May 2022, Mr B entered into a hire purchase agreement with CA Auto for a car. The car was five years old when Mr B acquired it, had a cash price of £18,798 and had covered 43,486 miles.

Around two months later, the car’s engine began to malfunction, and Mr B took it to the supplying dealership to be inspected. The dealership replaced the timing belt, vacuum pump, electro valve, engine oil sump, banjo bolt, end screw gasket and oil filter. Mr B was then given the car back.

Mr B says the top up engine oil light and engine light then started to illuminate at random intervals. He noticed that the engine light would go off when the car’s ignition was switched on and off.

In August 2023, the car’s engine malfunction light came on when Mr B was driving it and the car went into limp mode. He took the car to a garage who provided a report, which said:

‘I.....carried out tests by connecting a fault code reader via the OBD slot in the car, these faults codes pointed me towards a timing belt/camshaft issue.....Having worked with these engines before I am aware of a fault that occurs within the 1.2 litre petrol engine models of these vehicles...This problem effects the timing belt, where due to a bad design flaw, rubber comes off the timing belt, working its way around the engine within the oil, damaging and wearing key components, like pistons, within the engine. Which would also highlight why the engine oil light is showing’.

The engineer went on to say that it was his professional opinion that the dealership changed the timing belt because of the defect he had described, and that they didn’t carry out a full inspection of the engine. So, they hadn’t cleared any rubber that would have been lodged in the engine. He went on to say that the problems with the car stemmed from either a manufacturer fault or an error not identified by the dealership.

Mr B complained to CA Auto about what had happened and provided them with a copy of the garage’s report. CA Auto didn’t uphold the complaint. They said Mr B needed to have provided a diagnostic report from the manufacturer. And they concluded that the problems with the car were likely down to wear and tear, noting that Mr B had been able to travel over 11,000 miles since the car was repaired by the dealership.

Mr B referred his complaint to our service. Since then, the car’s timing belt has been replaced again and a further inspection of the car took place in February 2024. The report set out the following:

‘The wet belts on these engines are a common fault, this is down to belt passing through the oil system’.

The report went on to make some general comments on how the quality of oil affects the life of a timing belt, and how the belt will fail if a driver ignores the oil life monitor, fails to maintain the car, or uses the wrong oil.

The engineer concluded that:

'This issue if present at the first belt change should have been picked up during oil change, this issue would have been developing over time, use, age and mileage.....At present the vehicle drives as normally expected for its type, age and recorded mileage. It is without excessive noise, vibrations and all major units, and running gear are operating normally. Further investigation will be required to over 20 fault codes that have accumulated, this is after fault codes were cleared down by the 2nd repairing garage'.

Our investigator didn't recommend that the complaint should be upheld. He felt that it was likely that the issues with the car would have manifested themselves sooner than they did, had the repairs carried out by the dealership been unsuccessful.

Mr B didn't agree and said he had provided enough evidence to show the timing belt had deteriorated in 2022 to the extent that rubber entered into the engine which caused the malfunction. He said the dealership hadn't correctly repaired this issue and this would eventually lead to the car needing a new engine.

Mr B asked for an ombudsman's decision and so his complaint was passed to me to decide.

I issued my provisional decision on 16 September 2024, an extract of which I include below and which forms part of my final decision.

'Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Mr B used a regulated hire purchase agreement to acquire the car that is at the centre of this dispute. Our service can consider complaints about these sorts of agreements.

I've taken into account relevant law and legislation, which here includes the Consumer Rights Act 2015 ("CRA"). The CRA implies terms into the contract between Mr B and CA Auto that the car will be of satisfactory quality. Satisfactory quality is what a 'reasonable person' would expect, considering amongst other things the age and price of the car. Section 9 of the CRA refers to satisfactory quality and notes that the quality of goods includes their state and condition. It goes on to list the following aspects, amongst other, of the quality of goods: (a) fitness for all the purposes for which goods of that kind are usually supplied; (b) appearance and finish; (c) freedom from minor defects; (d) safety; (e) durability.

It's reasonable in my view to note that the car wasn't new when Mr B acquired it and had already travelled over 43,000 miles. So, it wouldn't be reasonable to expect a used car like this to be in the same 'as new' showroom condition which it would have been when it was first supplied. But just because the car was used with some mileage, doesn't mean that CA Auto has no requirements in relation to satisfactory quality, or more specifically durability.

It's clear there were significant issues with the car around two months after Mr B acquired it. The dealership changed the timing belt along with several other components. The mileage of the car at that time was just over 45,000 miles. In my view, that seems quite low mileage for a timing belt to have been replaced and it points to there being something significantly wrong with the car at that time.

The position does get a little more complicated after then, however. I say this because the car then broke down again almost a year later and after Mr B had covered around a further 11,000 miles. So, it could be argued that what caused the car to break down again was unrelated to the repairs the dealership had carried out bearing in mind the time that had elapsed and the mileage that had been covered since. It could also be argued for similar reasons that the subsequent breakdown of the car wasn't related to the condition of the car when it was supplied.

I note also that the more recent independent inspection didn't go into much, if any, detail on what specifically had caused the car to break down. It gave some quite general comments on how timing belts can fail rather than actual detail on what happened to Mr B's car. The report did note there were 20 faults codes but said these needed to be investigated further.

However, the first report did set out why the engineer felt the faults with the car were down to either a manufacturing defect or an error when the dealership worked on the car two months after Mr B acquired it. And it would seem unlikely for the timing belt to have needed to be replaced twice within 60,000 miles if there wasn't something fundamentally wrong with either the belt or how the car has affected the belt. I note also that the alternator belt had snapped when the timing belt was replaced on the second occasion.

I can't conclude for certain that rubber particles from the timing belt infiltrated the engine to the extent that this has what caused the car to break down twice, which is essentially what Mr B alleges. However, on balance I can't rule that out either. I've seen also a photo taken by Mr B after the second inspection of the car took place in February 2024 which shows that there was a fault with the engine which required a repair. The mileage at time was 59,891.

So, there's clearly still what seems to be quite serious issues with the car. I note also that the manufacturer sent Mr B an urgent safety recall notice in December 2023, explaining that vehicles of his make and model were being checked for timing belt particles in the engine oil circuit, and where issues were being caused by deterioration of the timing belt.

Overall, I don't have much in the way of definitive evidence that Mr B's car has been affected by the rubber entering into the engine as he alleges. However, neither do I have much concrete evidence on what has caused the issues with the car. As I've mentioned earlier in my decision, I have to consider what is most likely to have happened where the evidence is inconclusive. For the reasons I've given, I think it more likely than not that the problems with the car that Mr B has experienced and continues to experience is because of issues that necessitated the first timing belt change and which appears not to been resolved since. Having considered what the CRA sets out about durability, I think a reasonable person wouldn't expect a car to have suffered so many serious issues at this level of mileage. This in my view demonstrates the car wasn't sufficiently durable. And because of this, the car wasn't of satisfactory quality as required and set out in the CRA.

As I've provisionally found the car wasn't of satisfactory quality, I will set out what I think will likely be required to put things rights.

I currently think that it would be reasonable for CA Auto to take back the car from Mr B and cancel the hire purchase agreement with nothing further owed. CA Auto should arrange for the car to be collected and Mr B shouldn't be held responsible for any associated costs with taking the car back.

According to the dealership's vehicle invoice from when the car was supplied to Mr B, he received a part-exchange value of £19,498 for his previous car, £18,386.02 of which was

used to settle an existing hire purchase agreement he had. So, I think it reasonable that CA Auto refund Mr B the difference between these two amounts, this being £1,111.98.

Mr B has sent us a copy of an invoice where he paid £791.40 when the timing belt was replaced on the second occasion. It seems that a MOT was also carried out on the car at that point. I wouldn't expect CA Auto to cover that cost, as that's something to be expected in the general use of a car. The invoice doesn't set out the cost of the MOT but generally those costs are around £50. So, I think a fair figure to refund Mr B is £730 and that's currently what I intend to ask CA Auto to do.

Interest, at 8% simple per year, should be added to the £1,111.98 from 13 May 2022 and to the £730 from 15 February 2024, to the date of settlement.

Mr B has sent us another invoice for £122.16 recently, showing that the rocker cover seal has been replaced on the car. There isn't though anything on the invoice explaining why this needed to be replaced. I can't be reasonably certain that this work resulted from the issues with the car that Mr B has experienced and which has led me to provisionally conclude that the car wasn't of satisfactory quality. So, I currently don't intend to ask CA Auto to refund this amount to Mr B.

Mr B has though incurred some distress and inconvenience from being supplied with a car that wasn't of satisfactory quality This has understandably had an impact on him, and I consider it reasonable that CA Auto makes a payment to reflect this. A sum of £250 is reasonable in my view considering the circumstances of this complaint.'

I asked Mr B and CA Auto to provide any further comments or evidence they wanted me to consider. Both parties replied accepting my provisional 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.

As Mr B and CA Auto accept my provisional decision, including how I proposed to put things right, I see no reason to depart from those provisional findings and conclusions. So, for the reasons given in my provisional decision, I will be upholding this complaint.

Putting things right

CA Auto should take back the car from Mr B and cancel the hire purchase agreement with nothing further owed. They should arrange for the car to be collected and Mr B shouldn't be held responsible for any associated costs with taking the car back.

CA Auto needs to refund Mr B £1,111.98, which represents the difference between the part-exchange value he got for his previous car and the amount required to settle his previous finance agreement for this.

CA Auto also needs to refund Mr B £730, which represents a fair figure relating to the invoice of £791.40 that he paid.

Interest, at 8% simple per year, should be added to the £1,111.98 from 13 May 2022 and to the £730 from 15 February 2024 to the date of settlement.

And CA Auto should pay Mr B £250 for the distress and inconvenience he's been caused for being supplied with a car of unsatisfactory quality.

My final decision

I uphold this complaint and direct CA AUTO FINANCE UK LTD to take the action I've set out in the 'putting things right' section of my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 23 October 2024.

Daniel Picken
Ombudsman