

The complaint

Mr M is unhappy that a car supplied to him under a hire purchase agreement with Volkswagen Financial Services (UK) Limited ('VWFS') was of an unsatisfactory quality.

What happened

In May 2018, Mr M was supplied with a new car through a hire purchase agreement with VWFS. He paid a deposit of £5,251 and the agreement was for £23,173 over 49 months; with 48 monthly payments of £325.36 and a final payment of £11,162.50. The agreement was repaid in full on 22 April 2022.

In March 2023 the car broke down and was recovered to a manufacturer's dealership for investigation. The dealership found the engine had failed due to an oil leak which resulted in the cambelt tensioner failing, and a replacement engine was required. At the time of failure, the car had done around 27,280 miles.

Mr M wasn't happy with what had happened, and he complained to VWFS that the car wasn't reasonably durable. VWFS didn't uphold the complaint, so Mr M brought it to the Financial Ombudsman Service for investigation.

Our investigator said there was a fault with the car that had caused the cambelt tensioner to fail. She said the evidence provided indicated this was caused by a slow oil leak, but there was no evidence this was present or developing at the point of supply.

The investigator also said that the cambelt was a part that was subject to wear and tear. As such, she didn't think the failure was as a result of lack of durability. And she didn't think VWFS needed to do anything more.

Mr M didn't agree with the investigator. He said that manufacturer guidelines say the cambelt tensioner should be changed every 70,000 miles or 5 years, whichever is sooner. And neither of these conditions apply in his case. So, he thinks that VWFS should cover/contribute towards the costs he's incurred.

Mr M also said he thought the fault was caused by something different to what the evidence suggested. The investigator agreed a four-week extension for Mr M to provide any additional evidence to support this, but he didn't provide anything. As such, this matter 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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr M was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the car should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, VWFS are responsible. What's satisfactory is determined by things such as what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the vehicle's history and its durability. Durability means that the components of the car must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the car was supplied, unless VWFS can show otherwise. But, where a fault is identified after the first six months, the CRA implies that it's for Mr M to show it was present when the car was supplied.

So, if I thought the car was faulty when Mr M took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask VWFS to put this right.

In this instance, it's not disputed there was a problem with the car, and that the cambelt tensioner failed. However, I need to consider if this was due to a fault that was present or developing when the car was supplied to Mr M, or if the fault was caused because the car wasn't reasonably durable.

Mr M has said the car broke down on 3 March 2023, which I've noted was around 4 years and 11 months after the car was supplied to him.

I've seen an estimate from the dealership dated 17 March 2023. This says the car had broken down after the coolant light had come on. And Mr M was quoted for a replacement engine. A further email from the dealership dated 21 April 2023 confirmed that there was an oil leak from the exhaust cam/sprocket/adjuster cover that had caused oil contamination in the rear of the engine.

In their final complaint response letter, VWFS have said the dealership confirmed the cambelt had failed, which caused damage to the engine. This doesn't seem to be disputed and would tie-in with the quotation for a replacement engine. As such, I'm satisfied it's reasonable for me to accept it was a failed cambelt tensioner, most likely due to an oil leak, that caused the breakdown of the car.

Mr M has provided a letter from the DVSA, dated 20 December 2022, and addressed to someone other than himself. This letter relates to a bolt, which holds the fuel rail in an unspecified make, model, and age of car, that has sheared. And the DVSA determined this wasn't a safety defect with the car.

Mr M has also provided details of a safety recall for cars of the same make, model, and age as the one VWFS supplied. However, this also relates to fuel rail bolts in cars that were sold in the US and Canadian markets only.

As the issues with the car supplied to Mr M relate to an oil leak, which resulted in a cambelt tensioner failure, I'm satisfied the information provided by Mr M about the fuel rail bolts has

no relevance to the car he was supplied with. And I won't be taking this into consideration when making my decision.

I haven't seen anything to show me that the cambelt tensioner failed due to a fault that was present or developing when the car was supplied to Mr M. I've also seen that Mr M had the car regularly serviced, which included an oil and oil filter change. Had there been an oil leak present when the servicing took place, or had the cambelt tensioner needed replacing, I would've expected it to be noted on the servicing documents. And nothing has been. Given this, I'm satisfied the fault with the car wasn't present or developing when the car was supplied to Mr M.

Turning to durability, the cambelt tensioner is a part that wears during regular usage and needs replacing. Mr M has said the manufacturer's guidelines say this should be replaced every 70,000 miles, or every five years, whichever is sooner. While the car had done less than 30,000 miles when the part failed, it was a few weeks short of being five years old – the point at which the manufacturer said replacement would be needed.

While I appreciate what's happened, and the impact this had on Mr M, the fault was caused by the failure of a part that should've been replaced within weeks according to the manufacturer. And, while the car wasn't quite five years old, it was sufficiently close to five years for me to say that, on the balance of probabilities, and in the absence of any other information, the cambelt tensioner failed due to normal in-service wear and tear and not because it wasn't sufficiently durable.

As such, given the above, I won't be asking VWFS to take any further action.

My final decision

For the reasons explained, I don't uphold Mr M's complaint about Volkswagen Financial Services (UK) Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 30 November 2023.

Andrew Burford
Ombudsman