

The complaint

Mr W complains FirstRand Bank Limited trading as MotoNovo Finance (MotoNovo) have supplied him with a scooter which he believes wasn't of satisfactory quality.

What happened

In November 2018, Mr W acquired a brand new scooter through a 60 month hire purchase agreement with MotoNovo. The cash price of the scooter was £2,899.

In May 2019, following the service of the scooter, the following issues were found:

- The suspension was fitted incorrectly which damaged the rear mud guard and tyre;
- The vacuum air hoses were split;
- Electric box rubber mounts were split.

The dealership arranged for a replacement tyre and vacuum air hoses to be sent to Mr W. Although he confirms receipt of the tyre, he said he never received the air hoses.

In October 2019, Mr W complained that he was experiencing more issues. He reported them as:

- Faulty speedometer;
- The suspension was creaking;
- Areas of corrosion and flaking paintwork found in several parts of the scooter (mainly the foot panel).

In regards to the speedometer, the dealership said it arranged for it to be replaced under warranty by another garage but Mr W said this didn't happen as the booking was cancelled. In relation to the corrosion, it was arranged by the dealership for the scooter to be taken to a third party garage, nearby to Mr W, for inspection.

Mr W contacted the dealership again in April 2020 about the increased level of corrosion. They said this wouldn't be covered by warranty. However as a gesture of goodwill, they agreed to strip the paint of the affected areas, apply rust treatment and repaint it. Mr W initially declined this offer as they wouldn't cover the cost to collect and re-deliver the scooter however it was eventually taken to the dealership for the work to be carried out in May 2020. The dealership said they repaired the affected areas and carried out the necessary works following a brake safety recall. They advised Mr W to remove the chrome fork covers that he had fitted to the scooter to prevent the creaking noise and to use an anti-corrosion solution to prevent further issue. They said the vacuum hoses were split at the end but they weren't able to replace them as they weren't in stock but they said it wouldn't have a detrimental impact on the performance of the scooter. They found no faults with the speedometer or suspension.

Following the repair, Mr W complained the issue with the corrosion remained and it was getting worse as it was showing on other parts of the scooter, such as the headlight.

Mr W complained to MotoNovo. They said there was insufficient evidence the issues were present or developing at the point of supply therefore they didn't agree the scooter was of unsatisfactory quality. They also said as the dealership had carried out a number of repairs as a gesture of goodwill, if there were further issues, that was an agreement between them.

Unhappy with their response, Mr W referred the complaint to our service. Our investigator concluded as the scooter was new, it wasn't reasonable for corrosion to be present so soon after supply. She recommended MotoNovo repair the affected areas and pay £100 compensation.

MotoNovo disagreed, they said:

- Corrosion can develop over a period of weeks;
- The scooter wasn't adequately maintained and needed to be cleaned after every ride;
- Mr W lives nearby to the sea and this can increase corrosion;
- There is a lack of evidence the corrosion was developing within the first six months;
- Mr W had carried out modifications and this could've caused the corrosion;

The investigator spoke to the third party garage who inspected the scooter, they commented:

- The corrosion is on the actual body of Mr W's scooter and likely to be present before it was painted by the manufacturer;
- It can take up to 6 to 12 months for corrosion to develop but the environment can speed this up;
- The corrosion on Mr W's scooter was normal for one that was four or five years old;
- The corrosion found in the foot bridge could be a sign of wear and tear;
- Specialist repairs would need to be carried out as a paint re-spray won't resolve the issue.

Upon further review, although the investigator remained of the opinion the scooter wasn't of satisfactory quality, she said it wouldn't be reasonable to allow Mr W to reject it as modifications had been made. As the dealership said it would cost over £1,500 for this specialist repair, she thought it wasn't economical to recommend a repair but she did think MotoNovo needed to do more. She recommended they apply a 10% price reduction of the scooter's cash price and pay £100 compensation. Both parties disagreed.

In July 2021, I issued my provisional decision and said:

*"I intend to uphold Mr W's complaint. I'll explain why.
Mr W acquired the scooter under a regulated hire purchase agreement. MotoNovo is the supplier of the goods under this type of agreement meaning they are responsible for a complaint about the supply and the quality of Mr W's scooter.*

The Consumer Rights Act 2015 (CRA) implies a term into the contract that the quality of the goods is satisfactory. To be considered "satisfactory", the goods would need to meet the standard that a reasonable person would consider satisfactory – taking into account any description of the goods, the price and all the other relevant circumstances. In a case involving a vehicle, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of supply and the vehicle's history.

MotoNovo has supplied Mr W with a brand new scooter so it would be reasonable to expect the quality of it to be higher than a more well used one. It is also reasonable to expect it would be free from defects for a significant amount of time.

A number of points have been raised and although I may not comment on each one, I can assure both parties I've carefully considered them but for the purposes of this decision I will focus on the corrosion as I find that to be the central issue.

I've carefully considered the evidence provided by all parties and I acknowledge MotoNovo's comments that they don't think there's enough evidence to prove that the corrosion was present at supply. When looking at this complaint, I've considered what is most likely to have happened in the circumstances based on evidence.

Having done so, I'm most persuaded by the findings of the third party garage who inspected the scooter. I say this because it's the opinion of an independent party who I assume had the experience and specialist knowledge to inspect the scooter given it was the dealership who arranged for it to be looked at by them. As I'm not a vehicle engineer I think it's reasonable to rely on their findings.

The third party garage concluded the corrosion is likely to have been developing at the manufacturer stage before it was painted. They explained the web like effect found on the scooter shows the corrosion was on the bare metal and it was 'leaking' through the paintwork. While they accepted corrosion can take up to 12 months and environment elements will play a factor, they said the corrosion found on Mr W's scooter was normal for a bike that was a few years old.

I've thought about MotoNovo's comments about Mr W living by the sea and how this is likely to increase the corrosion process. However there is insufficient evidence such as an independent inspection or expert opinion to demonstrate this was the cause of the level of corrosion found on Mr W's scooter. Whilst the third party acknowledged environmental factors will play a part, they didn't conclude it was the cause of the corrosion on Mr W's scooter.

I think it's unfair for MotoNovo to say the reason for corrosion was because the scooter wasn't reasonably maintained by Mr W or as a result of the modifications he made. I've seen job cards showing the scooter was serviced in May 2019 and May 2020 at the intervals as per the user manual. Mr W said he has had many scooters in the past and he knows how to look after them, he's never experienced such issues and the scooter is kept in his shed so it's covered. The third party garage also commented to our service that it was kept in a very good condition.

I've already set out the high expectations of a new vehicle. Having considered the above, the scooter's age (less than 12 months) and mileage (less than 500 miles), I wouldn't expect a brand new scooter to experience such an issue. On balance, I believe the corrosion was an inherent manufacturer fault which was present and or developing at the time of supply. Therefore I'm not satisfied it was of satisfactory quality meaning there was a breach of contract.

In circumstances where a fault is found, the CRA allows one opportunity for repair and this is what happened, the dealership carried out a repair in May 2020. Based on the pictures provided by Mr W of further areas displaying corrosion thereafter, I'm not satisfied the repair fixed the issue. The third party garage said in order to resolve the corrosion, a specialist repair would need to be carried out and if done so correctly, it wouldn't re-appear. It seems the dealership carried out the repairs themselves but it's unclear whether they had the specialist knowledge and or resources to sufficiently resolve the corrosion. If this is the case, it's unlikely the repair would be sufficiently durable.

In addition to the issue of corrosion, I can see there were other issues with the scooter and this meant a tyre needed to be replaced due to the suspension not being fitted correctly and the vacuum hoses were split. Taking into account what has happened and the issue of the corrosion continuing, I think it's now fair to allow Mr W to reject the scooter.

MotoNovo should end the agreement with nothing further for Mr W to pay and collect it at no cost to him. In addition, it should refund the deposit of £300 plus pay 8% simple interest per year from the date of payment to the date of settlement. While I accept there were faults with the scooter as outlined above, it appears Mr W was still able to use it therefore I believe it's fair he pays to reflect that use so I don't intend to ask for any of his monthly payments to be refunded.

I understand Mr W has carried out some modifications to the scooter such as fitting a new exhaust. He said it gives it a 'retro' sound but it hasn't impacted its overall performance such as the speed. Based on the terms of the agreement, modifications are not permitted so I don't believe it's fair to say MotoNovo should refund these costs.

Lastly given Mr W has had to travel to different garages for repairs to be carried out and he was left without his scooter while this happened, I believe there has been a level of inconvenience so I think MotoNovo should also pay £150 compensation for the trouble and upset caused.

In summary, due to the above faults, notably the corrosion, I'm not satisfied Mr W's scooter was of satisfactory quality when it was supplied".

Response to provisional decision

Mr W said he had spent over 12 months dealing with this matter and as a result he hadn't used the scooter as much as he had planned due to the ongoing issues. In addition to what was awarded in the provisional decision, he felt he should be refunded the monthly payments plus paid 8% simple interest. He also said he had paid £120 for the scooter to be returned to be repaired in May 2020.

MotoNovo responded with a number of points and provided additional evidence such as the scooter manual and warranty card. In summary, they said:

- The dealership was led to believe the speedometer had been replaced but it wasn't but in any event they later found no fault with the speedometer;
- As confirmed by the importer and manufacturer of the scooter, bodywork and corrosion isn't covered by warranty so no claim was made;
- There was a casual agreement between the dealership and the third party garage to service the scooter. The third party garage are not paint experts, therefore they can't supply a qualifying report;
- When the scooter was repaired in May 2020, the work was carried out by bodywork specialists;
- The modifications made by Mr W to the scooter are presumed to have damaged the paintwork.

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.

While I've taken into account what the manual says and what the warranty covers, I've also considered the relevant law which says the quality of goods should be satisfactory. For the reasons explained above, I don't believe a brand new scooter should experience such issues so soon after its supply so I'm not convinced it was of satisfactory quality. There have been repairs but issues still remain, namely the corrosion. Although the dealership said we can't rely on the comments of the independent third party garage, they haven't provided any alternative independent evidence or expert opinion. So I remain of the belief that it's fair to rely on what the third party garage has said. Equally, I can't reasonably conclude the modifications made by Mr W led to the corrosion and/or damage to the paintwork. Lastly if the repair in May 2020 was carried by a bodywork specialists, I don't think it's reasonable to expect ongoing signs of corrosion thereafter, which suggest the repair wasn't sufficiently durable.

While I appreciate what Mr W has said especially concerning the use of the scooter, I'm satisfied he was able to use it so it wouldn't be fair to ask MotoNово to refund the monthly payments. Mr W said he paid £120 to return the scooter to be repaired. In order for me to award any out of pocket expenses as a result of the scooter being of unsatisfactory quality at the time of supply, I would generally expect to have evidence of the same. As Mr W has been unable to provide this, I won't be asking MotoNovo to reimburse him for this cost. Given the circumstances, I consider what I've said MotoNovo must do to put things right to be a fair resolution.

Taking everything into account, I'm not persuaded to change my opinion. I've decided to uphold Mr W's complaint for the same reasons as outlined in the provisional decision.

My final decision

For the reasons set out above, I've decided to uphold Mr W's complaint.

To put things right, FirstRand Bank Limited trading as MotoNovo Finance should:

- End the agreement with nothing further for Mr W to pay;
- Collect the scooter at no cost to Mr W;
- Refund the deposit plus pay 8% simple interest per year from the date of payment to the date of settlement;
- Remove any adverse information about this agreement from Mr W's credit file.
- Pay £150 compensation to Mr W for the trouble and upset caused.

If FirstRand Bank Limited trading as MotoNovo Finance considers tax should be deducted from the interest part of my award it should provide Mr W with a certificate showing how much it has taken off, so he can reclaim that amount if he is entitled to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 21 September 2021.

Simona Charles
Ombudsman