

## The complaint

Mr G, who is represented by a firm of solicitors, complains that PCF Bank Limited rejected his claim under s 75a Consumer Credit Act 1974 in respect of a motorcycle which wasn't supplied.

## What happened

I have read the lengthy exchange of correspondence by both parties' solicitors and what follows is a brief summary of events. I trust both will accept the brevity of this background summary is sufficient for the purposes of this decision, but I would reassure them that I have taken into account all the arguments put forward and will concentrate on those issues which I consider directly relevant to my decision.

In 2017 Mr G ordered a new limited-edition motorcycle from a company I will call N. In the autumn of 2019 N told Mr G that the motorcycle was nearing completion and issued an invoice for £44,644, of which a £500 deposit was paid by Mr G. He spoke with a broker who arranged a conditional sale loan with PCF. He made repayments totalling £11,5402.30 as of December 2020.

In January 2020 N went into administration before the motorcycle was delivered. N was taken over by another company and it offered to supply an alternative motorcycle which I gather Mr G didn't want.

Mr G made a claim against PCF requesting that it cancel the agreement and refund his payments and deposit. PCF said that Mr G had signed an acceptance certificate which stated: *"The equipment is complete, in accordance with its description and satisfactory to us for our purposes."* It argued that Mr G had made an inaccurate statement and it believed he had to repay the loan. Mr G's solicitors argued that as the motorcycle was a limited edition which remained incomplete at the time the loan was taken out it was impossible for him to meet this condition and PCF was aware of this. It said it didn't believe this undermined his statutory rights.

In April 2020 N, now under new ownership, offered to build a new model motorcycle as a gesture of goodwill. There was no delivery date for this new model and Mr G didn't want it so he declined this goodwill offer.

PCF then offered to refund all payments made and the deposit as well as freezing future payments if Mr G accepted construction of the alternative motorcycle. He would then hand over the motorcycle to PCF and it would cancel the agreement. Mr G's solicitors rejected this offer as it was contingent on the new motorcycle being delivered. If N failed to deliver the new model Mr G would remain liable under the agreement. It also said that Mr G was not obliged under consumer law to accept this offer.

A counteroffer was made under which Mr G would accept the offer made by N and for delivery to be made to PCF, but only if his original request for the agreement to be terminated etc. was met. In due course agreement was reached save for the matter of legal costs and a complaint was brought to this service.

The complaint was considered by one of our investigators who recommended it be upheld in the terms which had finally been agreed by the parties, but he didn't consider costs should be paid by PCF. Mr G accepted the adjudication, but PCF's solicitors responded at some length challenging elements of the view issued by our investigator. However, it did conclude by saying that it PCF should not be liable for interest at 8%.

I issued a provisional decision as follows:

I thought there had been some misunderstanding by the parties and their solicitors as to the legislation which covers this complaint. Because Mr G's transaction with N was financed by a Conditional Sale Agreement section 75 of CCA1974 does not apply.

However, the finance agreement, that is the Conditional Sale Agreement, in this case is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. PCF is also the supplier of the goods under this type of agreement, and responsible for a complaint about those goods. The relevant law says that under a contract to supply goods, there is an implied term that *"the quality of the goods is satisfactory"*. The issue in dispute is whether N breached its contract with Mr G by failing to supply the motorcycle. If N's actions amount to a breach of contract, then Mr G has the right to seek redress for the consequences of that breach. And by virtue of consumer law he can pursue that claim against PCF.

I said this issue had all the hallmarks of a relatively straightforward matter albeit covered with several layers of argument laid on top. Goods were ordered which were not delivered due to N going into administration and there was a breach of contract. It seemed to me that PCF had explored a number of avenues to resolve this matter, but none has been satisfactory to Mr G. However, it did accept an offer made by Mr G in January 2021 save for the issue of legal costs.

I couldn't see why Mr G should have been expected to accept the offer of a different Motorcycle from N, now under new ownership, if he didn't want to do so. It may have been advantageous to PCF, but he was under no obligation to agree to that proposal. He had ordered a specific model and N failed to deliver it. Quite simply the contract was broken and I said that under consumer law he was entitled to seek redress from PCF.

I considered the offer of an alternative motorcycle to be a red herring. The contract was for model A and not for model B which I noted was totally different. One was a copy of a historic motorcycle and the other was a modern racing one.

If PCF had sought to mitigate its losses by asking Mr G to accept the offer from N and then hand it over then I would have expected it to absolve him of any risk from the new one not being delivered. I gather N has indicated that it may be some time before one is available for sale. In essence PCF has asked that Mr G take a risk in order to obtain the redress to which he is entitled.

I have noted PCF's argument that it was misled by Mr G when he signed the acceptance certificate. This is a standard requirement for such loans and I agreed that it would have been better had Mr G added a note to explain the situation. However, I believed the broker, who was acting in this matter was aware of the situation. PCF has suggested he was acting for Mr G, but wasn't so persuaded. He was paid by PCF for the business which suggested he was acting in some way for it. I gather he is a friend of Mr G, but I do not consider that has any bearing on the matter.

Although it wasn't clear, it appeared that the certificate was signed on Mr G's behalf, by

the broker and I was satisfied that he was aware the motorcycle wasn't completed. The email exchange between the broker and PCF indicated that the invoice from N was submitted. This implied that N was close to being able to deliver. However, it transpired that N had misled Mr G and I didn't consider his statutory rights should be undermined by a failing of N.

I reiterated that I thought this matter could be seen as a fairly straightforward issue and it was regrettable that a resolution had been delayed. I believed that when Mr G initially complained PCF instructed solicitors and so he felt obliged to do the same. This service does not, as a matter of course seek to require redress for professional fees incurred in pursuing a complaint.

However, I am satisfied that the circumstances in this case merit an award.

PCF engaged solicitors and they pursued the matter with some vigour and I thought it was only reasonable that Mr G sought his own legal assistance. As I said above the matter was relatively straightforward and I am somewhat surprised that it had taken this long and involved such voluminous and at times confrontational correspondence. I believed that Mr G was, in effect, pushed into spending additional money on legal advice and I considered those costs to consequential to his loss from the failure of N to deliver what it had promised. Therefore, I was minded to require PCF to cover those costs.

Finally, at one point PCF's solicitors raised a concern that this service reaching a decision might be prejudicial to their client. I was not persuaded that this was right. Mr G is entitled to make use of this service and PCF is a regulated business and the loan is a regulated one and so comes within our jurisdiction. Should PCF wish to bring a cross claim I do not consider it would be prevented from doing so by any decision I issue.

I concluded that PCF should:

- end the agreement with nothing further to pay,
- refund Mr G's deposit,
- refund all the rentals he has paid since finance inception to the date of settlement,
- pay 8% simple yearly interest on all refunded amounts from the date of payment until the date of settlement,
- remove any adverse information from Mr G's credit file in relation to the agreement,
- pay his legal fees relating to this dispute up to this point.

### **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.

I have been informed that the parties and their solicitors have reached an agreement on settling this complaint and I am content that it reflects my provisional decision. As part of that agreement Mr G has agreed to provide cooperation to PCF to secure the delivery of a replacement motorcycle from N. I cannot direct him to do so as part of this decision (I only have power to direct a financial business), but given he has reached an agreement I am satisfied that he will do as agreed.

### **Putting things right**

PCF should compensate Mr G as set out below.

## **My final decision**

My final decision is that I uphold this complaint and I direct PCF Bank Limited to:

- end the agreement with noting further to pay
- remove any adverse information from Mr G's credit file in relation to the agreement,
- refund his deposit of £500.00
- refund his monthly payments totalling £25,112.35
- pay interest totalling £2,481.13
- pay Mr G's costs of £7,164.53

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 20 June 2022.

Ivor Graham  
**Ombudsman**