

## **The complaint**

Mr S complains that a motorbike he'd acquired via a hire purchase agreement with MotoNovo Finance Limited wasn't of satisfactory quality.

## **What happened**

In July 2020 Mr S acquired a new motorbike via a two-year hire purchase agreement with MotoNovo. He says around three months later the motorbike's clutch started slipping and he took it to a local garage who tightened it.

Mr S says that the motorbike was fine for a while but an issue with the clutch developed again and so he took it back to the supplying dealer in June 2021. The dealership inspected the motorbike and had to order a part to fix the clutch. There was a delay in this part being delivered.

In September 2021 Mr S complained to MotoNovo that his motorbike was still awaiting repair and said it was unfair he had to continue to maintain the monthly payments. MotoNovo contacted the dealership who confirmed there was a fault with the bike but said in their opinion this hadn't been present at the point of supply. It explained there was a delay in the part being available.

The motorbike was repaired and returned to Mr S in October 2021. MotoNovo didn't uphold Mr S's complaint. It said there was no evidence that the fault had either been developing or been present at the point of supply to Mr S. It said that due to the length of time Mr S had had the motorbike and the number of miles he'd ridden on it, that an independent report was required to show that it had been inherently faulty.

Mr S was unhappy at MotoNovo's response and complained to this service. Our investigator recommended that Mr S's complaint should be upheld. She said the motorbike had required a repair to its clutch within the first three months of Mr S taking possession of it. It had then required further repairs in June 2021 after a mileage of just over 5,000. Our investigator said a clutch should reasonably be expected to last for between 20,000 and 50,000 + miles. So, a clutch wouldn't be expected to fail after only one year and 5,000 miles. She said she didn't think the motorbike had been as durable as reasonably would be expected.

Our investigator said that in these circumstances it would be fair for MotoNovo to reimburse Mr S's monthly payments for the period he had been without the motorbike while it was awaiting repair. She also thought compensation of £150 would be fair for the distress and inconvenience caused with dealing with the faulty motorbike.

MotoNovo disagreed with our investigator's view. It said that although it would accept that the clutch needing a repair so soon wouldn't be the norm there was no evidence that this was due to a fault that had been present or developing at the point of supply.

As the parties were unable to reach an agreement the complaint has been passed to me.

## 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.

When looking at this complaint I need to have regard to the relevant law and regulations, but I am not bound by them when I consider what is fair and reasonable.

As the hire purchase agreement entered into by Mr S is a regulated consumer credit agreement this service is able to consider complaints relating to it. MotoNovo is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

Under the Consumer Rights Act 2015 there is an implied term that when goods are supplied the quality of the goods is satisfactory. The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price, and all other relevant circumstances.

The relevant law also 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 can be aspects of the quality of the goods.

Here, the motorbike was new so a reasonable person would have expected that there wouldn't be any issues with maintenance and repair for a reasonable period of time. I think there would be an expectation that the motorbike was fault free.

Mr S says that the motorbike's clutch started to slip after around three months and so he took it to a local garage for it to be tightened. I haven't seen any job card for that repair, so I don't know what that garage said or whether it gave any opinion as to an issue with the motorbike. However, after that repair it appears Mr S was able to use the motorbike without a problem for around nine months before another issue with the clutch arose in June 2021. By this time Mr S had ridden the motorbike for around 5,000 miles.

I've seen that there is no evidence that the fault with the motorbike was either present or developing at the point of supply. It's unfortunate that in MotoNovo's final response letter to Mr S in respect of his complaint, it states the dealership had said the fault had been present since Mr S had acquired the motorbike as this is actually an error. Looking at the contact notes supplied by MotoNovo it's clear that the supplying dealership had actually said the fault with the clutch wouldn't have been present or developing at the point of supply.

Our investigator has said that she doesn't think that the clutch was as durable as a reasonable person would have expected and that therefore this means the motorbike wasn't of satisfactory quality. And I've seen that MotoNovo has also accepted that the clutch requiring repair as soon as it had wouldn't be "*the norm*" but maintains its stance that as the fault wasn't present at the point of supply then it shouldn't be held liable. While I appreciate a clutch is a wear and tear item it does have a guideline life span of between 20,000 and 50,000 miles. Here, Mr S has ridden the motorbike for around 5,000 miles which is substantially lower. I've seen no evidence that would suggest that this the fault may be due to the way Mr S has used the motorbike. The dealership has said that the fault with the clutch was that "*the input shaft bush has failed allowing movement in the transmission shaft and associated gears and clutch basket.*" It also says this wasn't a fault

that would have been present or developing at the point of supply. There hasn't been an independent inspection of the motorbike and its clutch.

So, although the fault with the clutch doesn't appear to have been either developing or present at the point of supply of the motorbike to Mr S, I think that a reasonable person wouldn't consider it to have been durable given that the clutch needed repair so soon. As I don't consider the motorbike was durable, I don't think it was of satisfactory quality at the point Mr S acquired it. And I'm upholding Mr S's complaint.

In considering what would be a fair redress for Mr S's complaint, I think he should be reimbursed his monthly payments under the agreement for the period he was without the motorbike while he waited for it to be repaired.

I also think it would be fair that he is compensated for the distress and inconvenience caused having to deal with the faulty motorbike. I agree with our investigator that £150 is fair to reflect the impact this has had.

I understand that the motorbike was repaired under the warranty and is now in full working condition. As the repairs have been successful and the motorbike returned, I don't think it would be reasonable for Mr S to now reject it and unwind the agreement.

### **Putting things right**

I'm asking MotoNovo to do the following:

- Reimburse Mr S his monthly payments under the agreement for the period he was without the motorbike (June until October 2021). This payment is to include interest at the yearly rate of 8% simple from the date of payment until the date of settlement.
- Pay Mr S £150 compensation for any distress or inconvenience that's been caused dealing with the faulty goods.
- Remove any adverse information from Mr S's credit file about this agreement.

### **My final decision**

For the reasons set out above I'm upholding Mr S's complaint. I'm asking MotoNovo Finance Limited to do the following:

- Reimburse Mr S his monthly payments under the agreement for the period he was without the motorbike from June until October 2021. This payment is to include interest at the yearly rate of 8% simple from the date of payment until the date of settlement.
- Pay Mr S £150 compensation for any distress or inconvenience that's been caused dealing with the faulty goods.
- Remove any adverse information from Mr S's credit file about this agreement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 April 2022.

Jocelyn Griffith  
**Ombudsman**