

The complaint

Mr T complains that a trike motorcycle that was supplied to him under a hire purchase agreement with Black Horse Limited wasn't of satisfactory quality. He's being helped with his complaint by a friend.

What happened

A new trike motorcycle was supplied to Mr T under a hire purchase agreement with Black Horse that he electronically signed in July 2018. The price of the trike was £24,245, he paid a deposit of £10,675.98 and he agreed to make 36 monthly payments of £109.49 and there was a final repayment of £13,579.02.

He says that there were some issues with the trike's gears and clutch and that he then received a recall notice from the manufacturer about a clutch issue in February 2019. He says that the recall notice said that the trike wouldn't be safe to drive so he stopped using it.

He took the trike to two manufacturer's dealers but the recall repair wasn't carried out so he complained to the manufacturer and then he complained to Black Horse in April 2021. It said that he'd not made any allegation of any fault with the trike, only that a recall had been issued and there had been a delay in carrying out the work required. It said that it was Mr T's responsibility to contact the manufacturer or dealer. Mr T wasn't satisfied with its response so complained to this service.

Our investigator recommended that his complaint should be upheld. He thought that it was clear that the trike wasn't of satisfactory quality when supplied and that there had been a significant delay in reaching an outcome. He didn't think that Black Horse's offer to arrange for the trike to be repaired was the correct remedy in the circumstances. He recommended that Black Horse should allow Mr T to reject the trike and should: collect it from him; refund his deposit, rental payments since February 2019 and the cost of the diagnostics reports, all with interest; pay £200 for any distress and inconvenience caused; and remove any adverse information from Mr T's credit file in relation to the agreement.

Black Horse has asked for this complaint to be considered by an ombudsman. It says that it should be allowed an opportunity to repair the trike.

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 agree with the outcome recommended by our investigator for these reasons:

- Black Horse, as the supplier of the trike, was responsible for ensuring that it was of satisfactory quality when it was supplied to Mr T - whether or not it was of satisfactory quality at that time will depend on a number of factors, including its age and mileage and the price that was paid for it;

- the trike that was supplied to Mr T was new, with a price of £24,245, and I consider that it was reasonable for him to expect that it would be free from even minor defects;
- satisfactory quality also covers durability which means that the components within the trike must be durable and last a reasonable amount of time – but exactly how long that time is will also depend on a number of factors;
- the trike was supplied to Mr T in July or August 2018 and he says that there were some issues with its gears and clutch and that he then received a recall notice from the manufacturer about a clutch issue in February 2019;
- he says that he took the trike to two manufacturer’s dealers but the recall repair wasn’t carried out – he’s not provided any documentary evidence to show that the trike was taken to two manufacturer’s dealers for the recall repair but he’s provided a handwritten note of all of the payments that he’s made for the bike including two substantial payments that he made for work on the trike after he was sent the recall notice;
- Mr T paid £60 for an independent specialist to inspect the trike in September 2021 and it said that it suspected that there was a secondary activation cylinder issue;
- he paid £100 for the specialist to inspect the trike again in October 2021 and it said that “... a fault was found with the secondary clutch activation cylinder” and “fluid was by-passing the piston reducing the efficiency of the cylinder”;
- it also said: “Suspect the gear change issue ... has been apparent since [Mr T] took ownership ...”;
- the trike’s mileage was recorded on the October 2021 inspection report as 1,340 miles and Mr T says that the recall notice said that the trike wouldn’t be safe to drive so he stopped using it in February 2019;
- I consider it to be more likely than not that there was a fault with the trike when it was supplied to Mr T which caused it not to have been of satisfactory quality at that time;
- Black Horse says that it should be allowed an opportunity to repair the trike but it didn’t offer to repair the trike when Mr T complained to it, Mr T says that he hasn’t used the trike since he received the recall notice and I don’t consider that it would now be fair or reasonable for the trike to be repaired; and
- I find that it would be fair and reasonable in these circumstances for Black Horse Limited to allow Mr T to reject the trike.

Putting things right

I find that Black Horse should end the hire purchase agreement and arrange for the trike to be collected from Mr T– both at no cost to him. The hire purchase agreement shows that Mr T paid a deposit of £10,675.98 for the trike. I find that it would be fair and reasonable for Black Horse to refund to him the deposit that he paid for the trike, with interest. I find that it should also remove any information about the hire purchase agreement that it’s recorded on Mr T’s credit file.

Mr T says that he stopped using the trike after he received the recall notice and the mileage recorded on the October 2021 inspection report shows that he only had limited use of the trike. I find that it would be fair and reasonable for Black Horse to refund to Mr T the monthly payments that he’s made under the agreement for the period since he received the recall notice, with interest. I consider that it’s fair and reasonable for it to keep the payments that he made before then as payment for the use that he’s had from the trike.

Mr T paid £160 for the inspection reports in September and October 2021. I find that it would be fair and reasonable for Black Horse to reimburse those amounts to him, with interest.

These events have clearly caused distress and inconvenience for Mr T. I find that it would also be fair and reasonable for Black Horse to pay him £200 to compensate him for that distress and inconvenience.

My final decision

My decision is that I uphold Mr T's complaint and I order Black Horse Limited to:

1. End the hire purchase agreement and arrange for the trike to be collected from Mr T – both at no cost to him.
2. Refund to Mr T the deposit that he paid for the trike.
3. Refund to Mr T the monthly payments that he's made under the hire purchase agreement for the period since he received the recall notice in February 2019.
4. Pay a total of £160 to reimburse Mr T for the cost of the two inspection reports.
5. Pay interest on the amounts at 2, 3 and 4 above at an annual rate of 8% simple from the date of each payment to the date of settlement.
6. Remove any information about the hire purchase agreement that it's recorded on Mr T's credit file.
7. Pay £200 to Mr T to compensate him for the distress and inconvenience that he's been caused.

HM Revenue & Customs requires Black Horse to deduct tax from the interest payment referred to at 5 above. Black Horse must give Mr T a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 7 October 2022.

Jarrold Hastings
Ombudsman