

## **The complaint**

Miss Y complains about an electronic bike she purchased using credit provided by Klarna Bank AB (publ) 'Klarna'.

## **What happened**

Miss Y purchased the bike for £1,271 using a fixed sum loan agreement from Klarna in October 2020. However, she is unhappy with the quality of the item and points to many issues she has had with it including:

- the battery not performing as expected
- brakes squealing
- problems with the pedal bracket and top box
- walk mode not working as expected
- speedometer not accurate
- issues with the indicator light
- chain rusting

Miss Y is also unhappy with how the supplier handled things when she raised issues. She says their customer service was poor and they made inaccurate claims against her character. She also says they unfairly withdrew a maintenance contract she had already purchased. Miss Y adds that the bike is very difficult to get serviced anywhere and parts are hard to source. Had she known this she would not have bought it.

Because Miss Y could not get satisfaction from the supplier she approached Klarna who considered the matter in light of Section 75 of the Consumer Credit Act 1974 ('Section 75'). However, it concluded that the bike was not faulty and any issues with the bike are down to customer damage / lack of maintenance.

Our investigator looked into the matter. She upheld the complaint and recommended a full refund plus additional compensation for distress and inconvenience. In summary, she felt Miss Y had been complaining about issues from an early stage – and that the evidence pointed to manufacturing issues with the battery, walk mode and pedal bar in particular.

Klarna disagreed, in summary it says:

- Miss Y had an accident in the bike on 10<sup>th</sup> December 2020 and it is difficult for it to say what faults mentioned after this point were connected to this event; and
- the battery life will be reduced if Miss Y has increased the speed limit of the bike and the quality of the battery should not be compared to more expensive high end

products – the new battery offer was made on a goodwill basis so Miss Y could try out the new range.

Miss Y did not fully agree with the proposed redress either – as she wants to claim other costs too.

So the matter has come to me for a decision.

I issued a provisional decision on this matter. In this I said:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*Section 75 allows Miss Y to make a claim against Klarna in respect of the bike which she bought using its credit. However, for Section 75 to apply certain criteria needs to be satisfied relating to things like the parties to the transaction, the way the payment was made and the cost of the goods. I am satisfied this is met and Section 75 applies here.*

#### **Breach of contract**

*Any Section 75 claim against Klarna is limited to any breach of contract or misrepresentation by the supplier in relation to the agreement to supply the goods. That is the extent of its liability. That is particularly important for me to note here because Miss Y has mentioned several after sales matters which do not appear to be covered by the original agreement to supply the goods and therefore I consider are not covered by her Section 75 claim in relation to breach of contract against Klarna. This includes her complaint about the general customer service of the supplier and any allegations she has made against it (or it has made against her) in relation to matters such as discrimination or defamation. It also includes matters relating to aftersales servicing (including a service and rebuild she says she did not authorise) parts availability and the withdrawal of a separately purchased aftermarket warranty.*

*I am focused on the agreement for the sale of the bike as financed by Klarna and whether the quality issues which Miss Y has identified amount to a breach of said supply contract.*

*The Consumer Rights Act 2015 ('CRA') is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".*

*The CRA says the quality of goods are satisfactory if they 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.*

*The CRA says 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 goods.*

*Miss Y has put forward a detailed account of several failings with the bike. However, there are particular challenges in determining that the bike is inherently defective here particularly in light of the following:*

- *on 10 December soon after taking delivery of the bike (Miss Y says she took delivery in November 2020) Miss Y was in an accident on the bike which slipped on wet*

*leaves causing damage – Miss Y reported this to the supplier as she needed a spare part;*

- shortly after this accident on 22 December 2020 Miss Y reported that the bike fell over in the wind with more damage as a result;*
- in February 2021 a report was carried out on the bike by an engineer sent by the supplier identifying extensive damage (forks bent/handlebars bent/slightly bent wheel/broken mudguard) and maintenance issues;*
- a second engineer's report was carried out later on noting the bike had covered 4446kms and pointed out a puncture, damage mudguards, missing chain, cut wires and missing bolts. The engineer tested the walk mode and battery and did not find any abnormalities. The report concluded the bike was overdue a major service and the work done on it by a third party was of a poor standard.*

*Klarna, like the supplier has focused on the reports of the accidental damage to the bike and the maintenance issues identified by the engineer and does not accept that the bike is inherently faulty.*

*accidental damage*

*I am not an expert – but I can see that most of the issues with the bike appear to have been identified after it was involved in an accident which was reported on 10 Dec 2020. I know Miss Y says she thinks the accident damage was restricted to the brake and controller unit she ordered – but there isn't anything persuasive to support that. And from the engineer's report carried out in February 21 it appears likely the damage to the bike was more extensive (it refers to the bike being bent in several places). I also note that in the fault report Miss Y provided at the time she states that the accident has resulted in an 'intermittent loss of power'. Overall the evidence indicates that the accident could be a source of damage to the physical parts and electrical systems on the bike including some of the issues Miss Y reported soon afterwards.*

*I also note that Miss Y reported that the bike was damaged again shortly after this incident when it fell over and the back box was broken. Miss Y appears to indicate that the back box fell off and this caused the bike to fall. But she also mentions a gust of wind blowing it over. I am unclear what she means but I don't see how the back box would have caused the whole bike to fall over or how (as shown in the picture of the damage) the fixtures on the back box had sheared off like that without having been forcefully hit by something. It seems more likely that the box was damaged when the bike fell over in the wind.*

*I also note that Miss Y has continued to make reference to the bike being blown over by the wind as she has nowhere to properly store it. Recently she says wind damaged the brake and mirror. Although these are more recent events they appear to indicate that the way the bike is stored has left it vulnerable to damage from the elements – which makes it even harder for me to determine that issues she has raised are likely due to manufacturing defects.*

*Miss Y has also said that she skidded on ice recently and fell but that this did not damage certain parts she thinks Klarna is attributing to her previous accident. However, while I acknowledge that accidents are not all the same there is a possibility that any accident can cause damage to parts – so that can't fairly be ruled out here. And accidental damage to goods is not something that would render goods of unsatisfactory quality under the CRA.*

## *wear and tear/maintenance*

*The two expert reports (while admittedly not independent) show that the bike has suffered from extensive user wear and tear. This would appear to be in line with the use of the bike which Miss Y describes. Miss Y at one point refers to the bike getting dirty from riding to work along muddy country roads in significant rainfall. She says that the bike is used daily for commuting 50 min each way and subject to extreme weather conditions along these routes. So it appears (and noting she started using it in the winter) that the bike was subject to significant opportunity for wear and tear. This would explain a lot of the issues identified. Particularly issues with consumables like tyres/chains and any rust/corrosion.*

*Both of the expert engineer reports indicate that there has been a lack of/poor maintenance of the bike. I note that when Miss Y initially bought the bike she opted not to purchase a service plan and was having repairs carried out by her local bike shop. The supplier states:*

*Each bike does come with a pack which explains what you need to do on a daily, weekly, monthly and annual basis. Adhering to this will prevent early wear and tear on the bike and its components.*

*However, from the evidence I have seen I am not persuaded the bike was being cleaned and maintained as it should have been. Miss Y by her own admission says due to the time she returns from work and how dark and cold it is she is not always able to clean it despite the muddy conditions it is subjected to on country lanes. Furthermore I can see that Miss Y emails the supplier in February 2021 with some queries about the basic operation of the bike and some information she has seen in the owner's manual about maintenance. This communication indicates she hasn't been maintaining the bike as instructed in the manual. She says the manual says to oil and grease some areas but she has not been doing this as she was told not to when she first got the bike. The supplier appears surprised by this and confirms that she does need to maintain the bike in this way.*

*Furthermore, from about April 2021 I can see email correspondence where Miss Y appears to act as a middle person between the supplier and the bike store she was having maintain the bike. This whole series of emails indicates that the original bike store was not confident with servicing the bike, didn't have the tools they needed and had done certain things they should not have. I can see that in June 21 Miss Y emails the supplier to ask about their own servicing costs. But by then it appears too late to have prevented some of the issues that have occurred. Miss Y appears to have since changed to another bike store for servicing.*

*I know Miss Y is unhappy with what she sees as limited places to get the bike repaired and serviced – but that doesn't appear to be a breach of an agreed term in the supply contract here. The key thing here in regard to Klarna's potential liability is whether the goods as supplied were of satisfactory quality. And here it does appear there were significant issues with the way the bike had been maintained and repaired which has likely exacerbated or caused problems with loose/damaged and rusting parts as opposed to manufacturing issues.*

*The significant issues discussed above and the absence of any persuasive evidence to the contrary (Miss Y's original mechanic refused to comment further or confirm any original manufacturing defects and the recent report she has got from another bike shop does not do this either) make it difficult for me to conclude that many of the issues Miss Y had had with the bike are manufacturing defects.*

*I do acknowledge that Miss Y raised squeaking brakes at an early stage and before any accident. However, from what I can see this appears to be quite normal in new bikes and can also occur from contamination and dirt rather than inherent defects – I think there isn't persuasive evidence that this is a manufacturing issue. Although Miss Y has continued to say they squeak considering the other evidence around the use and maintenance of the bike it is difficult for me to say this is an inherent defect.*

*Miss Y has indicated that she has maintained the bike and Klarna needs to prove how the bike fell to show what damage was caused– and that there was no inspection when it fell or shortly after. However, I am unable to ignore accidents which appear to have caused damage to the bike. And I think when combined with the persuasive evidence indicating wear and tear damage/lack of or poor maintenance it is fair to say that there are many things that have occurred which are not manufacturing defects.*

*However, with that said based on the evidence I have I do think there are some things which could be put down to inherent defects:*

#### *walk mode*

*Miss Y has made particular reference to the 'walk mode' feature self-activating since supply. But I don't see any persuasive evidence this was raised before January 2021. I think it is likely if Miss Y was having issues with this at an early stage I would have seen it included in her fault reports prior to this. I also note the supplier says it did not appear to find a fault with this when it carried out its first inspection and suggested Miss Y was pressing the button without realising. So I am not persuaded there was an issue with the walk mode self-activating.*

*Miss Y made a different complaint at the end of February 2021 about a problem with the walk mode working only with the kickstand down. Here the supplier appears to acknowledge there might be a fault with the kickstand sensor. I also note it happened not long after the supplier checked the bike and found no issues with walk mode. So this appears to be a more recently developed manufacturing fault rather than something pre-existing and less likely to be caused by accident or misuse. I note the supplier sent out a new sensor kit which Miss Y says fixed the issue, so it does appear there was some kind of issue with this sensor. I also note that despite offering a repair of sorts the supplier didn't pay for Miss Y to have it fitted. I will come back to this point later.*

#### *the battery*

*I note that Miss Y reported concerns with the battery straight away. So if I was satisfied the battery was faulty then it might be fair to conclude this was an inherent defect rather than due to wear and tear/ lack of maintenance or accident damage.*

*Despite offering to swap the battery as a goodwill gesture (and eventually doing so) the supplier does not appear to accept there is anything wrong with it. It suggests that speed, terrain, incline and weather conditions will all impact the range of the battery and that what Miss Y has told them is normal. It eventually said it tested the battery and it is fine.*

*This is a difficult matter because there are several accepted variables with batteries. I note the website refers to battery range as being approx. 40-50 miles on a single 7-hour charge and that battery range will be an average and subject to conditions/gradient and ride weight.*

*At one-point Miss Y says she gets about 30 miles from a 7-hour charge and more recently less than that. But from what she has said about her journey on country lanes in particular*

*weather – and the damage and maintenance issues with the bike– I think it isn't unexpected that she would get less than the optimum possible miles. There is also a suggestion that the particular setting Miss Y has been using has meant her battery life is heavily reduced. This would make sense – although I am not entirely sure she is using this setting.*

*However, I do note Miss Y has maintained that the battery she originally received always required a full 7-hour charge or would fail prematurely - even if it had some partial charge already. This is despite contrary claims in the manual and from support that indicated the battery could be fully charged in about 90 mins as long as 20% power remained – a top up charge of sorts. In an early email to the supplier Miss Y explains how she ended up getting stranded on her usual commute and having to walk after only carrying out a 4 hour top up charge because the display was on 3 of 5 bars. She has since maintained that anything other than a 7-hour charge results in the battery failing prematurely – and that the concept of the quick top up charge has never worked for her.*

*The battery charging issue has given me pause for thought as Miss Y did raise this at an early stage so it is difficult to put down to accident or wear and tear damage. She has also been consistently raising the same matter around the top up charge feature not working as it should. Furthermore, while the supplier said there was no issue with the battery it isn't clear to me how they have tested it or whether they have looked into Miss Y's specific concerns with the top up charging. So on balance I think Miss Y likely did have a faulty battery from the point of supply. I note Miss Y was offered and eventually supplied a replacement – but I also have to consider that in context of any other issues – which I discuss below.*

### *Misrepresentation*

*Miss Y has indicated she was mis-sold the bike in regard to ongoing repairs and maintenance required. In order to show misrepresentation I would need to be satisfied that a false statement of fact was made by the supplier at the time of sale which induced her to make a purchase she otherwise would not have made. While I understand Miss Y is disappointed with the cost of spare parts and official servicing – from the information I have I am not persuaded she was given false information about this by the supplier at the point of sale. And her claim that she was told not to lubricate anything with oil when she first got the bike is not persuasive based on the evidence I have seen.*

### *Conclusion*

*Klarna points to Miss Y's use as the cause of all the issues with the bike and Miss Y appears to indicate the opposite – that they are all due to the poor quality of the bike. But I think the answer is likely something in between.*

*As I have already explained I think based on the evidence available many of the problems can fairly be put down to damage and maintenance failings. But there are issues which have required repairs/replacement (particularly the battery and kick stand sensor) which I think are not likely down to these things. I now need to decide what a fair way of putting that right is.*

*I note that Miss Y required a replacement battery very early on and then another repair was required around March 2021 to a sensor fault with the kickstand. The battery was not provided immediately, and the sensor was not fitted for her. So on both occasions the issues were not resolved without causing delay or inconvenience to her. With the provisions of the CRA in mind (including the supplier's one attempt at repair/replacement) I think Miss Y should have been allowed the remedy of rejecting the bike around March 2021 when the sensor issue occurred. So I think it is fair that Klarna now take back the bike.*

*I am sorry to hear about the stress and anxiety this issue has caused Miss Y. But I think it is difficult based on the evidence here to conclude that it would be fair for Klarna to pay a full refund and provide the additional compensation for the consequential losses she is claiming. I also note that Klarna's liability under Section 75 is restricted to the 'like claim' against the supplier in court – and for this type of contract it is unlikely a court would award for distress and inconvenience in any event. So I won't be making an award of this nature here.*

*In deciding what is fair I have noted:*

- Miss Y has been using the bike and has covered significant mileage with it to date so any redress should reflect this use she has had*
- The bike has suffered recent accidental damage and been subject to additional wear and tear due to lack of maintenance – which is not the fault of the supplier or Klarna . I appreciate Miss Y has indicated that had she given back the bike earlier it would not have been subject to further damage. But I think it is reasonable for the bike to have been stored, maintained and used in a way that would have mitigated this. I think any refund needs to reflect this.*

*This is not a science but all things considered I think Miss Y should be able to return the bike and get a refund equivalent to about 70% of the purchase price. Miss Y also says she has paid to have the new sensor fitted. I think this wasn't something she should have paid for as I think this was likely a manufacturing fault. So she is out of pocket for this. Klarna should also pay for this on production of an invoice and proof of payment for the fitting costs already incurred (up to a maximum of £150 as I currently don't see how it could reasonably cost more).*

*I understand the finance agreement would now have ended and I make this decision based on Miss Y having made all her payments to date. Klarna can make further submissions if this is not the case.*

### ***My provisional decision***

*I uphold this complaint and direct Klarna Bank AB (publ) to:*

- Collect the bike at no extra cost to Miss Y;*
- Refund her £900 representing a partial refund for the bike;*
- Refund Miss Y the cost incurred to have a new sensor fitted on production of an invoice and proof of payment for this (up to £150); and*
- Pay interest at 8% simple per year on all refunds from the date it declined Miss Y's Section 75 claim to the date of settlement.*

*I asked the parties for their comments:*

*Klarna accepted the decision.*

*Miss Y said that she felt the provisional decision was fair considering the use she has had of the bike. However, she does not agree with all my outcomes. In summary, she says:*

- the supplier did not want to carry out repairs and caused unnecessary delays which meant she had to pay for alternative transport costs – which she thinks should have been reimbursed*
- the walk mode was self-activating from November 2020 causing her to have*

accidents and injure herself – she continues to suffer symptoms as a result

- the expert reports are not independent and in some cases she thinks are irrelevant
- what she has stated in certain correspondence cannot be used as evidence as it is her opinion
- she has been unable to store the bike inside because her housing association told her she cannot do this– it is also too heavy to be carried upstairs – there was also only one incident where it fell independently (and she thinks this was due to the top box) – the other times the bike fell on her
- the incident when she skidded on ice and fell on the bike recently is irrelevant as it was mentioned to highlight the point that bracket damage isn't caused by falls
- she has been maintaining the bike and any conclusions that she hasn't been are not based on evidence
- at the point of buying the bike the supplier did not tell her she could not buy a service plan after

### **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.

Miss Y clearly feels strongly about this matter and has emphasised that she has been truthful throughout. I acknowledge what she has said and I want to say that my conclusions are not meant to infer that she hasn't been. My decision is simply made based on the balance of probabilities in the face of the sometimes limited and conflicting evidence which is available.

Miss Y has responded to my provisional decision to say she thinks it is a fair outcome overall and has also largely repeated evidence I have already read and considered. None of which changes my provisional findings. As a result I don't consider it necessary to go into detail about Miss Y's recent submissions particularly as all parties now accept it fair that the bike can be returned for a refund.

However, I will deal briefly with a few key points (some particularly relevant to the proposed compensation) as follows:

Miss Y has disputed that she hasn't maintained the bike and questioned whether certain damage was caused by accidents she had. She has also questioned evidence I have relied on (such as the expert reports) and also said certain evidence (such as her admission of a recent fall on the bike) is irrelevant.

I have carefully considered what she has said however it is for me as ombudsman to decide what is relevant and what isn't. The fact that the bike has suffered multiple accidents (including more recently) is a credible explanation for some damage that has resulted. The expert reports which support my findings around accident damage and lack of maintenance while not independent are persuasive when read with the other evidence available.

Furthermore, it is my view that Miss Y's own past correspondence (along with the expert evidence) indicates the bike is subject to hostile riding conditions, was not cleaned each day, and was not maintained in accordance with the service schedule. Miss Y has also not



provided persuasive evidence to support her current position that the bike was maintained as it should have been.

I note Miss Y has explained why the bike has been stored exposed to the elements (causing it to suffer damage) and why it wasn't serviced at certain times. But I think the storage and care of the bike is something fairly down to Miss Y so I don't think Klarna (via Section 75) is responsible for this.

I do accept there are a couple of things which are likely inherent faults (as explained in my provisional decision). And as a result I am directing Klarna to take the bike back. However, the times Miss Y was without the bike appear primarily down to the issues related to her own use of it rather than inherent faults. So I don't agree that she is due further compensation for alternative transport costs. I also still consider it fair (as detailed in my provisional decision) that Miss Y receives a reduced refund to reflect her use of the bike to date and its current condition.

Miss Y has mentioned that servicing she paid for separately wasn't done properly – but this wouldn't be part of her Section 75 claim against Klarna as it did not finance this.

Miss Y has also again mentioned the service plan she purchased which was cancelled by the supplier. As I have previously said, as this wasn't funded by the Klarna loan the dispute over its withdrawal is not something fairly covered by the Section 75 claim in question. I note Miss Y has also said she was not told the plan had to be bought at the time the bike was purchased. However, following on from the conclusion in my provisional decision I still don't think there is persuasive evidence of a misrepresentation at the time of sale. Nor do I think this would likely make a difference to my award here in any event.

#### *A note about personal injury and other claims*

I note that Miss Y has said she was having issues with the walk mode prior to her accident in December. I still think there isn't persuasive evidence of there being inherent faults with the walk mode self-activating (while the relevance of this now is lessened as I have agreed that the bike can be rejected). However, I also note Miss Y has claimed this issue caused her personal injury which has had a lasting impact on her health. However, to be clear, even if I was able to conclude that faults with the walk mode likely caused Miss Y personal injury this service is not able to make awards for loss of amenity. So while I am very sorry to hear about the symptoms Miss Y has described it is unlikely this service would be able to compensate for this in any event.

Miss Y should also be aware that choosing to accept my final decision on this matter might have an impact on any other claims she wishes to make in relation to personal injury or other losses against any party in the future in connection with this matter. If she is concerned about the implications of accepting my decision she should seek independent legal advice.

Miss Y says she has been unable to locate the receipt for the kickstand sensor fitting. She says it likely cost £25. I think it is highly unlikely to have cost any less. So if Miss Y is unable to produce the documentation I think it fair that Klarna pay her the £25 in any event.

Miss Y has also asked if the third party back box which she bought separately can be taken off when the bike is collected. However, considering the circumstances here around the original damage to the back box I don't consider it fair and reasonable to direct Klarna to do this in the circumstances. Miss Y will have to arrange for this at her own cost prior to collection.

To conclude – I still think my provisional decision is fair and reasonable so I will be directing Klarna to settle on that basis.

### **Putting things right**

For the reasons specified above (incorporating my provisional findings) Klarna should put things right as detailed below.

### **My final decision**

I uphold this complaint and direct Klarna Bank AB (publ) to:

- Collect the bike at no extra cost to Miss Y;
- Refund her £900 representing a partial refund for the bike;
- Refund Miss Y the cost incurred to have a new sensor fitted on production of an invoice and proof of payment for this (up to £150) or £25 if she is unable to provide this information; and
- Pay interest at 8% simple per year on all refunds from the date it declined Miss Y's Section 75 claim to the date of settlement.

Klarna should provide a certificate of any tax it has deemed necessary to deduct from my interest award so that Miss Y can claim a refund from HMRC (if applicable).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss Y to accept or reject my decision before 14 November 2022.

Mark Lancod  
**Ombudsman**