

The complaint

Mr H complains that a motorbike supplied to him via a hire purchase agreement with Black Horse Limited was not of a sufficient quality.

What happened

In March 2024, Mr H was supplied with a used motorbike through a hire purchase agreement with Black Horse. The agreement was for £15,720.06 to be repaid by 48 monthly repayments of £234.80 and a final repayment of £10,581. Mr H also paid a deposit of £778.94. At the time it was sold, the motorbike was just over one year old and had done 1,456 miles.

The day after taking delivery of the motorbike Mr H says he experienced some problems with it. He says it emitted a large amount of blue smoke when it was started followed by an engine warning light illuminating. He says the motorbike cut out at the end of his journey. And the following day Mr H says the warning light remained illuminated and the engine cut out twice more.

Mr H's motorbike was collected by the dealership two days later for examination of any faults. Mr H says that he made it clear that he wanted to exercise his short term right to reject the motorbike at that time. But the dealership says it found no faults with the motorbike and returned it to Mr H. So Mr H complained to Black Horse about what had happened.

Whilst Black Horse was considering the complaint Mr H decided to sell the motorbike and settled the outstanding balance on the finance agreement. Black Horse was therefore unable to complete any further assessment of whether the motorbike was faulty. So it told Mr H it would need to base its conclusions on the assessment completed by the dealership – and that said there were no faults with the motorbike. So Black Horse didn't uphold Mr H's complaint.

Unhappy with that response Mr H asked us to consider the complaint. His complaint has been assessed by one of our investigators. She thought that it was probable that there was a fault with the motorbike when it was supplied to Mr H. But she didn't think Mr H had provided Black Horse with sufficient opportunity to examine the motorbike. She didn't think that it was the fault of Black Horse that Mr H sold the motorbike for less than he had paid for it. So the investigator didn't think Black Horse had acted unfairly.

Mr H didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process.

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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr H and by Black Horse. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

Mr H was supplied with a motorbike through a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to look into complaints about it. The relevant law – the Consumer Rights Act 2015 (CRA) - says, amongst other things, that the motorbike should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of the finance used to purchase the motorbike, Black Horse is responsible. What's satisfactory is determined by what a reasonable person would consider satisfactory given the price, description, and other relevant circumstances. In a case like this, this would include things like the age and mileage at the time of sale, and the motorbike's history.

Mr H has described some faults with the motorbike that he says were apparent very soon after it had been supplied to him. And, if those faults were present and lasting, I would tend to agree that they would indicate the motorbike might not have been of a sufficient quality when it was supplied.

But I am mindful that the faults occurred after Mr H had transported the motorbike in a van between the dealership and his home. The dealership has said the problems might have arisen due to the way in which the motorbike had been transported. And the dealership also says that it was unable to replicate the faults Mr H reported when it examined the motorbike a few days later.

I have no reason to doubt the testimony that Mr H has provided about the faults he experienced in the two days after the motorbike was supplied to him. But based on that testimony alone it would be difficult for me to conclude that demonstrates the problems were present, or developing, at the time of supply.

I accept that the CRA implies that, where a fault is identified within the first six months, it's assumed the fault was present when the motorbike was supplied. So here it would be for Black Horse to establish that any faults were not present at the time of sale.

But Mr H's actions in selling the bike just over two weeks after it had supplied to him means that Black Horse was denied any opportunity to gather the evidence it might need to determine whether any faults were present, and if they were present at the time the motorbike was supplied. I can see that Black Horse asked Mr H to arrange an independent inspection of the motorbike and offered to pay for that work to be completed.

It does seem that Mr H suffered a financial loss by selling his motorbike whilst Black Horse was investigating his complaint. He says he did that otherwise he would have passed the point at which he was able to exercise his short-term rights to reject the motorbike. But I cannot see how those two events are connected – by selling the motorbike Mr H removed any ability to reject it since he would no longer be able to return the goods to the lender. But

he would have been able to end the finance agreement and sell the motorbike at any time after Black Horse had completed its investigation of his complaint.

So, whilst I understand how disappointing this decision will be for Mr H, I am not able to conclude that he was entitled to reject the motorbike since I am not persuaded there is sufficient evidence that it was not of a satisfactory quality when it was supplied. I think it entirely possible that any problems Mr H experienced might have been transient in nature and so no longer present when the motorbike was examined by the dealership. So I don't think Black Horse needs to take any further action in regard to this complaint.

My final decision

For the reasons given above, I don't uphold the complaint or make any award against Black Horse Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 27 December 2024.

Paul Reilly
Ombudsman