

## The complaint

Mr S is unhappy that a bike supplied to him under a hire purchase agreement with First Response Finance Ltd was of an unsatisfactory quality. He's also unhappy with the amount he owes following a voluntary termination ('VT') of this agreement.

## What happened

First Response. He paid a £100 deposit, and the agreement was for £3,689 over 58 months with monthly payments of £125.21. At the time of supply, the bike was around three years old, and had done 6,814 miles.

Mr S has said that he'd had problems with the bike from when it was supplied to him – he'd had multiple breakdowns and, despite repairs being attempted, the bike remained faulty. In January 2024 Mr S asked First Response about his options for exiting the agreement. First Response have confirmed that *"during a call with our representative on the 17<sup>th</sup> January 2024, [Mr S] advised that he was unhappy with the vehicle. He claimed he'd had multiple mechanical issues with the vehicle since inception. He had been in contact with the supplying dealership throughout, who had repaired the vehicle on each occasion; however [Mr S] was concerned about potential ongoing costs."*

First Response chose not to deal with Mr S's complaint about the bike, instead dealing with the request to exit the agreement. They advised him that he could VT the agreement but, as he hadn't paid 50% of the amount owing under the agreement, he would still be required to pay the £2,704.62 shortfall. But they could arrange a payment plan for this. They also advised Mr S he would be liable for any damage to the bike outside of normal wear and tear.

The agreement was terminated, and the bike returned to First Response. They arranged for this to be inspected for damages and the inspector found damage totalling £355. However, after selling the bike for only slightly less than they'd anticipated, First Response reduced this charge to £75, and added it to the amount Mr S owed them.

Mr S wasn't happy with this and, after complaining to First Response, he brought his complaint to the Financial Ombudsman Service for investigation.

Our investigator said that First Response had correctly calculated the amount Mr S needed to pay to VT the agreement, and that the damage to the bike was more than the £75 he'd been charged. So, they thought Mr S had been fairly charged for the termination.

However, the investigator thought the bike wasn't of a satisfactory quality when it was supplied to Mr S. As the bike had been repaired at the point of termination, and as Mr S wasn't able to provide evidence of the costs he'd incurred in repairing the bike, they didn't need to reimburse anything Mr S had paid. However, the investigator said that First Response should pay Mr S £300 for the distress and inconvenience he'd been caused.

Mr S didn't agree with the investigator's opinion, and he felt that he should've asked to return the bike when it first broke down. First Response also didn't agree. They said that Mr S had never raised any issues with the bike, so they didn't think we were able to consider this part

of the complaint, as they hadn't had the opportunity to do so. They also thought the investigator had reached a conclusion without any evidence of issues with the bike, and that any repairs may not have been necessary and could be caused by wear and tear.

The investigator provided First Response with evidence showing that the supplying dealership had repaired the bike after it was supplied to Mr S and said that Mr S had complained about the quality of the bike in January 2024. So, their opinion remained unchanged.

As neither party agreed with the investigator's opinion, this matter has been passed to me to decide.

### **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've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr S was supplied with a bike under a hire purchase agreement. This is a regulated consumer credit agreement which means we're able to investigate complaints about it.

The Consumer Rights Act 2015 ('CRA') says, amongst other things, that the bike should've been of a satisfactory quality when supplied. And if it wasn't, as the supplier of goods, First Response are responsible. What's satisfactory is determined by things such as 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 vehicle's history and its durability. Durability means that the components of the bike must last a reasonable amount of time.

The CRA also implies that goods must conform to contract within the first six months. So, where a fault is identified within the first six months, it's assumed the fault was present when the bike was supplied, unless First Response can show otherwise. So, if I thought the bike was faulty when Mr S took possession of it, or that the bike wasn't sufficiently durable, and this made the bike not of a satisfactory quality, it'd be fair and reasonable to ask First Response to put this right.

### **Satisfactory Quality**

Before I address whether the bike was of a satisfactory quality when it was supplied, I want to address First Response's comments that we don't have the jurisdiction to consider this matter - we are unable to consider a complaint unless the financial business has been given the opportunity to consider it first.

In their letter to us dated 16 April 2024, providing a summary of this matter, First Response clearly stated that Mr S had raised the matter of the quality of the bike with them in January 2024 – the text of this letter is quoted above. It's clear from this that Mr S was raising an expression of dissatisfaction, which First Response should've dealt with as a complaint. The

fact that they chose not to, doesn't mean that they didn't have the opportunity to do so. And, by not doing so, under our rules Mr S is allowed to bring the matter to this service. As such, I'm satisfied I'm able to consider the quality of the bike within my decision.

While I've noted Mr S has said the bike broke down on multiple occasions, and that he spent around £600 repairing it, he's been unable to provide any evidence of this. However, I have seen a letter from the supplying dealership that confirms Mr S complained about problems with the bike on 9 June 2023, shortly after it was supplied to him. And, on 21 June 2023 they repaired the bike and returned it to him. Given that this happened so soon after the bike was supplied to Mr S, and given that First Response haven't provided anything to show the contrary, the CRA implies the bike was faulty when it was supplied to Mr S. So, I'm satisfied the bike wasn't of a satisfactory quality when it was supplied.

The CRA also allows First Response the single chance of repair, which took place on 21 June 2023. While Mr S has said the bike remained faulty, he hasn't been able to provide anything to show this was the case, or that the faults he said remained were present or developing when the bike was supplied to him.

As such, I'm satisfied the single chance of repair was successful. However, I still think First Response should do something to put things right. I'll deal with this later in my decision.

#### Termination Quote

Under the heading "**TERMINATION: YOUR RIGHTS**" the agreement Mr S signed clearly states:

*"You have the right to end this Agreement. To do so you should write to the person you make your payments to. They will be entitled to the return of the goods and to half the amount payable under this agreement, that is £3681.09. If you have already paid at least this amount plus any overdue payments and have taken reasonable care of the goods, you will not have to pay any more."*

At the time he terminated the agreement, Mr S had paid £976.47 (including the £100 deposit). This means that, to pay 50% of the amount owing under the agreement, Mr S still needed to pay £2,804.62. This is the amount he was both quoted and charged by First Response.

However, the agreement also refers to taking reasonable care of the goods. This relates to any damage that falls outside of normal fair wear and tear, which is an industry standard test. I've seen a copy of the inspection report dated 6 February 2024, at which point the bike had done 7,809 miles. This details damage to the bike and is supported by photographic evidence of that damage.

While these pictures are mainly too small to show the damage the report refers to, the picture of the front light assembly clearly shows significant damage. The inspector has said this required replacement at a cost of £180. As First Response have only charged Mr S £75 for the damage to the bike, even if I were to discount the other damage I can't clearly see in the photographs, Mr S has been charged less than the damage I'm satisfied is present. As such, I'm also satisfied that First Response have acted reasonably in this regard, and I won't be asking them to reduce or remove the £75 damages charge.

#### **Putting things right**

I think Mr S should be compensated for the distress and inconvenience caused by being provided with a bike that wasn't of a satisfactory quality. But crucially, this compensation

must be fair and reasonable to both parties, falling in line with our service's approach to awards of this nature, which is set out clearly on our website and so, is publicly available.

I note our investigator recommended First Response pay Mr S an additional £300 to recognise the distress and inconvenience he's been caused. And having considered this recommendation, I think it's a fair one that falls in line with our service's approach and what I would've directed, had it not already been put forward. So, this is a payment I'm directing First Response to make.

Therefore, First Response should pay Mr S £300 to compensate him for the trouble and inconvenience caused by being supplied with a bike that wasn't of a satisfactory quality (First Response must pay this compensation within 28 days of the date on which we tell them Mr S accepts my final decision. If they pay later than this date, First Response must also pay 8% simple yearly interest on the compensation from the deadline date for settlement to the date of payment<sup>†</sup>).

<sup>†</sup>If HM Revenue & Customs requires First Response to take off tax from this interest, First Response must give Mr S a certificate showing how much tax they've taken off if he asks for one.

### **My final decision**

For the reasons explained, I uphold Mr S's complaint about First Response Finance Ltd. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 6 May 2025.

Andrew Burford  
**Ombudsman**