

The complaint

Mr S is unhappy that a motorcycle (bike) supplied to him under a hire purchase agreement with BMW Financial Services (GB) Limited ("BMWFS") was of an unsatisfactory quality.

When I refer to what Mr S and what BMWFS have said, it should also be taken to include things said on their behalf.

What happened

On 12 January 2023, Mr S entered into a hire purchase agreement with BMWFS for the supply of a new bike. He paid £100 up front, and the agreement for the remaining cost of £17,609 was set to run for 48 months. Mr S was to pay 47 equal instalments of £306.96, with an optional final payment of £7,576.37.

Within six weeks of supply, Mr S experienced problems with the bike's throttle. BMWFS completed a repair, but the same problem happened again almost immediately. BMWFS completed a second repair and gave Mr S a new helmet by way of compensation, which he accepted.

A year later, Mr S experienced problems with the throttle again. He took it to the nearest dealership which diagnosed a fault with the throttle and completed a repair. Mr S was offered a credit of £500 towards any future purchase.

Unhappy with the repeated failure, and with other, smaller repairs he'd needed to arrange, Mr S complained to BMWFS. He said he wanted to exercise his right to reject the bike as being of unsatisfactory quality.

BMWFS issued a final response to Mr S in which it said it didn't accept his request to reject the bike. It said more than a year had passed, suggesting it wasn't a fault present at the time of supply, and Mr S had accepted repairs. However, in light of the bike's history, BMWFS offered £1,000 off a new bike, which Mr S could use in combination with the £500 credit already offered.

Mr S didn't think BMWFS had done enough, so he brought the complaint to our service.

Our investigator didn't think BMWFS had treated Mr S unfairly, so he didn't uphold the complaint. Mr S disagreed and said BMWFS ought to offer more compensation to keep his custom and allow him to reject the bike. Our investigator asked for comment from BMWFS, which said it would offer a further £350 for the distress and inconvenience. Mr S neither accepted nor declined the offer, and he asked for an ombudsman's decision.

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 decided not to uphold Mr S's complaint for broadly the same reasons as our investigator set out in his view.

The details of the complaint are well-known to both Mr S and BMWFS, so I won't comment on every detail. Instead I'll summarise what I consider to be the key issues. This is in line with the informal nature of our service, but I'd like to reassure both Mr S and BMWFS that I've considered everything available to me in respect of this matter.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr S entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says that goods will be considered of satisfactory quality where they meet the standard that a reasonable person would consider satisfactory, taking into account the description of the goods, the price paid, and other relevant circumstances. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

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 BMWFS to put this right.

In this instance, it's not disputed there was a problem with the bike's throttle within the first few weeks, or that it was likely to have been present when the bike was first supplied. Mr S has commented that BMWFS recorded the two faults that occurred within six weeks of supply as one repair. However, I don't find that of significant relevance. That's because Mr S didn't reject the bike when the second fault occurred, BMWFS completed the repair, and Mr S went on to use the bike for a year.

The dispute is whether the third fault was the same fault and suggestive of a failed repair. Mr S referred to the single chance of repair and said that because BMWFS had already had its chance at repair, he should be entitled to reject the bike.

Section 24(5) of the CRA says

"a consumer who has ... the right to reject may only exercise [this] and may only do so in one of these situations – (a) after one repair or replacement, the goods do not conform to contract."

This is known as the single chance of repair. And this applies to all issues with the goods, and to all repairs. That is, it's not a single chance of repair for the dealership *and* a single chance of repair for BMWFS – the first attempted repair is the single chance at repair. The CRA is clear that, if the single chance at repair fails, then the customer has the right of rejection.

So, under the CRA, it's possible that Mr S would've been successful in exercising his right to reject when the throttle failed for the second time in February/March 2023. However, the CRA doesn't set out that a customer *must* reject the bike if the first repair fails. It is simply a right. Here, Mr S allowed BMWFS to complete a second repair and went on to use the bike for a year. Therefore, it's unreasonable to expect to reject the bike based on the evidence of the first two repairs.

When Mr S experienced the third fault with the throttle, BMWFS repaired it again. He says he didn't accept the repair or compensation it offered as resolution, nevertheless, the evidence shows that the bike was repaired. Even if he hadn't agreed to the repair, as a year had passed since the second repair, it would've been Mr S's responsibility to show that any

fault was likely present when the bike was supplied. I haven't seen any evidence that Mr S obtained an engineer's report. Given the time that passed between the second and third throttle repairs, I don't think it's unreasonable that the onus would be on Mr S to obtain a report should he wish to pursue this matter with BMWFS.

Mr S said the third fault was the same as the first, therefore the six-month principle referenced in the CRA doesn't apply. However, I can't agree with his conclusion that the fault was a recurrence of the original fault. That's because he used the bike for a year, during which time it covered around 7,000 miles. Had there been an underlying fault from the time of supply, I think it's unlikely that he would've been able to travel that distance without experiencing related faults. I think it's also worth noting that in his credit agreement, the annual limit was an average of 7,000 miles, so it's clear that Mr S used the bike to the full extent expected under his agreement.

Mr S said his bike was in for other repairs during the year, and the evidence supports that. He experienced a problem with a footpeg falling off, which was later identified as the subject of a recall. The kickstand was replaced, and the clutch was repaired on three occasions. All of these repairs were completed under warranty, at no cost to Mr S. Some were relatively minor problems and/or could possibly be attributed to driving style. But, as the repairs were completed and Mr S continued to use the bike, I don't find that they support Mr S's request to reject.

I've considered the compensation offers BMWFS made to resolve Mr S's complaint. It offered £500 of credit towards a purchase, followed by £1,000 off a new bike, which he could choose to use with the credit. So, if he wanted to, Mr S could have £1,500 off a new bike. Since Mr S brought his complaint to us, BMWFS has also said it is willing to pay £350 for the distress and inconvenience.

Based on the evidence available, I haven't seen anything to persuade me that BMWFS did anything wrong by declining his request to reject. Mr S said in his submission to us and to BMWFS that he wanted to remain brand-loyal. So I think BMWFS's offer of £1,500 off a new bike is more than reasonable in the circumstances and likely made in the interest of good customer service.

While BMWFS offered a further £350 for the distress and inconvenience caused, it's not something I would've required. That's because I haven't identified anything in the evidence to suggest that BMWFS did anything significantly wrong. However, as it made the offer, Mr S may wish to contact BMWFS directly should he wish to accept it.

In summary, I'm satisfied that BMWFS reasonably declined Mr S's request to reject the bike because there is insufficient evidence to show that the more recent fault was present from the time of supply.

My final decision

For the reasons explained, I don't uphold Mr S's complaint about BMW Financial Services (GB) Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 5 June 2025.

Debra Vaughan
Ombudsman