

## **complaint**

Mr F complains that a bike he received and financed through an agreement with Close Brothers Limited ("Close Brothers") is a different than the one he ordered. He also complains that it was faulty when he took receipt of it.

## **background**

I issued my provisional decision in July 2018. I explained why I was planning to uphold Mr F's complaint. An extract of that provisional decision is set out below:

*Mr F took receipt of a new motorbike in February 2016. He financed the deal through a hire purchase agreement with Close Brothers. But he later discovered that it was not the limited edition he had asked for and instead he'd been provided with a basic model.*

*He also complained that he'd had multiple issues with the bike since he took receipt of it. There had been an oil leak and gearbox and shifter issues in October 2016 and the engine failed in August 2017 and needed rebuilding. He says that the engine has now failed catastrophically and he wants Close Brothers to take the bike back and end the agreement because of this and because he received the wrong model.*

*But Close Brothers disagreed. They said that given the amount of time he'd had the bike he would need to provide evidence that the faults he'd had with the bike were there from inception and they initially disputed that Mr F had been supplied with the wrong bike - although they now seem to have accepted this issue.*

*Our investigator didn't find enough evidence to suggest the bike was faulty at the point of supply and that Close Brothers were therefore responsible. But he did think it was clear that the bike wasn't what was ordered. He noted that the vehicle registration document (V5) said it was a basic model bike but the pre-contact information and statements said it should have been a limited edition and a note on Close Brothers files would suggest that was what was invoiced. So he was satisfied that the bike was, in all likelihood, a basic model when a limited one was ordered.*

*So the investigator decided that, in order to rectify the situation, Close Brothers should take the bike back, wind up the agreement and return all of the instalments Mr F had made towards the deal. He also suggested Close Brothers should pay Mr F £200 in compensation for the distress and inconvenience he'd experienced.*

*But Close Brothers didn't agree. They could not understand why Mr F had used the vehicle for such a long time before raising a concern that it was the wrong one. And they said that it would be unfair to expect them to take the bike back in an unacceptable condition as it wasn't supplied that way. They didn't agree that they should return Mr F's instalments although they were prepared to consider returning those instalments paid when the bike was being repaired and they therefore asked for a decision by an ombudsman.*

## **my provisional findings**

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

*Whilst I agree with the investigator's view about misrepresentation I don't currently agree with his view on whether the bike has been of acceptable quality and I'm currently expecting to propose a different redress. Please let me explain.*

*Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.*

*I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.*

*Mr F acquired his bike under a hire purchase agreement. The law allows us to look at this complaint against the finance provider, Close Brothers, even though some actions may have been completed by their agents, the dealership. The relevant law says that the bike should have been of satisfactory quality when supplied and that information provided about the bike should not be misleading. As I take account of relevant law when deciding what is fair and reasonable if on this basis I thought the bike was faulty when supplied or it was misrepresented, I'd think it fair and reasonable to ask Close Brothers to put this right.*

*was the bike misrepresented?*

*I've seen a copy of the V5 document and this clearly states that the bike is a normal model. The contract says that Mr F ordered a limited edition model and the statements Mr F has been supplied with support this.*

*The garage repairing Mr F's bike told Close Brothers of this issue in 2016 but it's true to say that Mr F doesn't appear to have complained about it until about a year later.*

*I don't think it matters when Mr F complained about the issue – it's clear that he wasn't given the bike that he'd agreed and was expecting to receive.*

*I note that there have been some conversations about the price of the bike. The inference is that Mr F only paid for a normal model but I've not been presented with any evidence of this and given the passage of time I think it would be difficult to establish a realistic picture of the variation, in price in 2016, between the two models. Mr F may well have secured a discounted deal and as the dealership has now closed this would be difficult to demonstrate.*

*However, I think the evidence is consistent. Mr F signed an agreement and received paperwork that suggested he'd ordered a limited edition model. The V5 demonstrates this isn't the case.*

*So I think the deal was misrepresented and Mr F should be allowed to reject the bike. I'll return to redress in a moment.*

*was the bike of satisfactory quality at point of supply?*

*Close Brothers responsibility for the bike is not unlimited. Whilst they are responsible for its condition at the point of supply, legislation doesn't hold them responsible for faults that develop afterwards. But it does require them to provide a product that would be considered suitably durable.*

*The dealership and garages involved have all suggested independently that the gearbox and shifter issues Mr F experienced about six months after he took receipt of the bike, were most likely to be caused by driving style and I've not been presented with any information to suggest otherwise.*

*The oil leak experienced at this time appears to have been because the garage over filled the oil so I don't think it would be fair for me to hold Close Brothers responsible for that error.*

*Because of these issues the bike was being repaired and was off the road for long periods of time. It's true to say that it was about eighteen months until it experienced it's first engine failure but it's also true to say that it had completed less than 4,000 miles at this point. And a short time later the engine failed again - catastrophically.*

*I think a reasonable person would expect a brand new bike of this value to be much more durable. It's had two engine failures in its first 5,000 miles and for that reason I think it's reasonable to say that Mr F should be allowed to reject it on the grounds that it's not been of satisfactory quality.*

*how should things be put right?*

*I think Close Brothers should now take the bike back in its current condition and cancel the credit agreement with nothing more to pay.*

*Mr F has been inconvenienced by the problems he's experienced and I think it's therefore fair, as the investigator suggested, that they pay Mr F £200 to compensate him for this.*

*But his enjoyment of the bike has also been spoilt. He's explained that he's not been able to ride it for much of the summer season and I think that Close Brothers should also compensate him for this. I think a further £200 is reasonable in the circumstances.*

*Mr F hasn't had the use of the more expensive bike he should have had the use of. So it's fair that he should be refunded the difference. But I have had the following considerations in mind when deciding how much should be refunded to him:*

- whilst it's conceivable that Mr F may not have noticed the incorrect specification of the bike at the point of supply, it's clear he was made aware of it by the garage when they noticed during the gearbox repairs. He could have raised the issue much earlier.*
- he's had some use of a new bike albeit not the one he ordered*
- it would be difficult to establish the exact difference in price between the two specifications at the time as it's not clear what discounts would have been applied*
- the bike has only completed 5,000 miles*

*So having taken all of the factors into account I think it's reasonable to suggest that Close Brothers return two thirds of the instalments.*

*There appears to have been no deposit paid on this credit agreement so I've not considered whether a deposit should be returned on this occasion.*

*I asked both parties to consider my provisional decision and get back to me with any new evidence they wanted me to consider. Mr F accepted my decision but Close Brothers didn't. I thank them for their comments which I have considered in detail.*

Close Brothers said there was evidence that the gearbox and shifter issues were caused by driver technique and they suggested that the garage overfilling the engine oil could have led to engine failure. They suggested that Mr F had not provided enough evidence to demonstrate that the vehicle was faulty at the point of sale and they said that, as he'd had the vehicle longer than six months, the relevant law said that he should.

I'm not persuaded by Close Brother's arguments here. I've seen that the oil leak appears to have been caused by overfilling the engine oil but I'm not persuaded that this was the reason for the engine failure and, as the engine has failed twice now within 5,000 miles, I think it's unlikely both failures, if any, would have been attributable to over filling. The second failure was catastrophic and as I've explained, I don't think that a reasonable person would think a catastrophic failure at this low mileage would suggest the vehicle was suitably durable and the relevant legislation says that Mr F should therefore be able to reject the motorbike.

### **my final decision**

For the reasons I've set out above I have not been persuaded to change my provisional decision and I therefore uphold this complaint and tell Close Brothers Limited to:

- collect and take the bike back at no cost to Mr F
- cancel the credit agreement with nothing more to pay.
- pay Mr F £200 to compensate him for the distress and inconvenience he's been caused
- pay Mr F a further £200 in recognition of the loss of enjoyment he's suffered
- return two thirds of the instalments Mr F has made towards his agreement and add 8% simple interest per annum

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 27 August 2018.

Phil McMahon  
**ombudsman**