

complaint

Mr D complains about a motorbike he bought on a hire purchase agreement financed by Black Horse Limited.

background

In July 2017 Mr D entered a hire purchase agreement with Black Horse for a motorbike worth £7,695. Since then he has taken it to be repaired three times. He would like to return the bike, cancel the agreement, and have his payments refunded.

The bike has been inspected twice by independent experts. The first report found that the bike had been extensively modified by a previous owner and that this had resulted in some faults which were present when Mr D bought the bike. But these faults were not serious, and they had all been repaired or would be easy to repair. The bike was safe to ride. Black Horse offered Mr D £250 compensation, which he accepted. I am told that this has been paid.

The second report, only two weeks later, found a number of faults, which the author found were not because of how the bike had been used. Black Horse agreed to fix those faults, since they were not the same faults it had fixed before, and offered Mr D another £150. It also offered to get a third report, at its own expense, to verify that the bike was repaired. This time he did not accept that offer, since he had lost faith in the dealership's ability to repair the bike, and oil had leaked onto him and ruined his jeans, which he'd paid £200 for. So he brought this complaint to our Service.

Our adjudicator did not uphold this complaint, because he thought Black Horse's offer was fair. Mr D did not agree. He said the bike is dangerous, and he could be injured or killed if he continues to ride it. He also alleged that the bike had been taken back to the dealership to be repaired more times than the dealership had acknowledged, and that the dealership had withheld some job cards in order to conceal this. He asked for an ombudsman's decision.

I wrote a provisional decision which read as follows.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I am currently minded to uphold it. I will explain why.

Mr D bought the bike on 3 July. The first repair was on 25 July. The rear light, seat, and fork springs were all repaired. The second repair was on 7 August, when a problem with the gears was fixed. And on 5 September the gears, rear light, and exhaust mount bolts were repaired or replaced.

Mr D says that some further work was done in October, between the first and second inspections; this is in dispute. At the first inspection, some bolts had been found to be loose, and he says they were tightened by the dealership before the second inspection (when they were found to be loose again). The dealership says it has no job cards to show that this work was done. Mr D claims that this is untrue.

It is not in dispute that these faults were present at the point of sale. But as I've said, the first inspection found that the faults were not serious, and the repairs were satisfactory (and the

outstanding repairs would be easy to do). Black Horse's first offer was made in early October, and accepted by Mr D. So I will not reconsider the compensation that was agreed for what had gone wrong up to that point.

The relevance of the dispute about whether the bolts were tightened between inspections is because at the second inspection the same bolts were found to be loose again. Some were missing. Mr D says that this proves that the fault cannot be fixed. The dealership denies having had the bike in that period, and so Black Horse says that the issue is capable of repair, and it should be allowed another chance.

The second inspection also found that the foot brake was wobbly, and there was some oil seepage (and Mr D says that he and his jeans had ended up being covered in oil). The engineer who carried out this inspection said in his report that these faults were not because of how the bike had been ridden. He said that the engine vibrates a lot, but not enough to cause the bolts to loosen as much as they had. This was not normal wear and tear.

The engineer was asked to elaborate on his second report. In subsequent emails, he suggested that the loose and missing bolts were either the result of a manufacturing fault, or Mr D had been tampering with them, but he could not determine which. Later on, he said that it was the result of the earlier modifications, but the fault would be easy to fix just by tightening the bolts. He also pointed out that Mr D had known about the modifications when he had bought the bike.

The difficulties I have with those last comments are as follows.

Firstly, there is no evidence to support the speculation that Mr D tampered with the bolts, and so I discount that as an explanation. The engineer says that the bolts could have come loose as a result of the increased vibrations resulting from the modifications, and that finding is not in dispute, so I accept it.

Secondly, although Mr D had been told about the modifications, he had not been told, and can't reasonably be expected to have known, that those modifications would cause several recurring faults with the bike. The bike was sold on the basis that it was still fit for purpose and of satisfactory quality, notwithstanding the modifications.

Thirdly, it's likely that the bolts were tight in July, when the bike was sold, otherwise the loose bolts would have been detected during one of the three repairs in July, August and September. They had become loose by October, only three months after the sale. So it's likely that if they had been tightened again, they would just have come loose again within another three months. For that reason, I don't think I need to decide the dispute about whether or not the dealership tightened them in October. Whether it did or it didn't do that, I don't think that tightening the bolts would have been an effective and lasting repair. So the fault would still not have been fixed after a fourth repair.

A number of different things have gone wrong with this bike in a short time – not just the loose bolts. It's likely that all of these faults were present or developing when the bike was sold. After three attempts to repair the bike, it has still not been fixed, and I think that the further repair which was recommended would have been unlikely to (or failed to) rectify the issue once and for all. So for these reasons I am currently of the view that this complaint should be upheld.

I think that it would be fair to allow Mr D to reject the bike and cancel the agreement, and to require Black Horse to refund the payments he has made since November.

The damage to Mr D's clothes is consequential loss resulting from the oil leak, and that £200 compensation should be paid to him for this. I will reduce the compensation for his inconvenience to £75, to reflect that Black Horse's offer of £150 did take into account the damage to his jeans (albeit not to the same extent that I have done).

So my provisional decision is that I am minded to uphold this complaint. Subject to any further representations I receive from the parties ... I intend to order Black Horse Limited to:

- Cancel the hire purchase agreement and take back the motorbike;
- Refund all of the payments Mr D has made under the agreement since November 2017;
- Remove all adverse information about the agreement from Mr D's credit file;
- Pay Mr D £200 for the damage to his jeans;
- Pay Mr D £75 for his inconvenience (in addition to the £250 it has paid him already).

responses to my provisional findings

Mr D asked to be refunded all of his monthly payments from July, instead of from November. He said that during the three repairs prior to then, the bike had been in the garage for nine weeks out of the first 13 weeks he'd had the bike, meaning that he'd only had the opportunity to ride it for four weeks. So the £250 he was paid in October was not enough to cover the monthly payments he'd made up to then. He also asked for his deposit back. I had not mentioned the deposit in my decision, so I asked Black Horse if it had any comment about that.

Black Horse asked for evidence of the damage to, and cost of, Mr D's jeans. Mr D said that as a result of having moved house, he could no longer find the receipt. But he explained that the jeans were expensive because they were Kevlar jeans for his safety. He argued that although he couldn't prove how much he'd spent on them, £200 was a reasonable price when compared with a leather bodysuit or a crash helmet, not to mention the bike itself.

Black Horse accepted Mr D's explanation about the cost, although it still asked for proof of purchase. It said that it would reply to my decision in detail later, and I gave it a deadline extension of a week. But it did not reply by the extended deadline.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

In a case where goods have been mis-sold, the usual redress proposed by our Service would normally be to unwind the finance agreement and refund the deposit and all the payments. In my provisional findings, I omitted to mention the deposit, which was £997.68. I agree that this should be refunded to Mr D.

The £250 which was paid to Mr D in October was never intended to be a refund of the monthly payments he had made up to then. According to the letter Black Horse sent Mr D, dated 7 October 2017, it was compensation for the following issues:

- £150 for his distress and inconvenience, and

- £100 for “loss of enjoyment … whilst repairs were being carried out.”

That letter went on to say: “If you have experienced any loss of use, please contact me and I will consider this further.”

Mr D would have taken into account the amount of time he had been without the bike up to the time that offer was made, and he accepted the offer. That is why I said in my provisional findings that I would not reconsider the offer. That compensation does not seem to be so obviously unfair that I should interfere with what the parties agreed at the time. It is for that reason that I decided that it would not be fair of me to require Black Horse to refund the payments Mr D had made up to October, and I remain of that opinion now. So I will only order Black Horse to refund the payments made since; that is, from and including November. The payments he made before then are for such use as he had of the bike, even if that was only for four weeks.

There is no reason for me to change any other part of my provisional findings, and so I confirm them here.

my final decision

So my decision is that I uphold this complaint. I order Black Horse Limited to:

- Unwind the hire purchase agreement and take back the motorbike;
- Refund the deposit of £997.68 to Mr D;
- Refund all of the payments Mr D has made under the agreement since November 2017;
- Remove all adverse information about the agreement from Mr D’s credit file;
- Pay Mr D £200 for the damage to his jeans;
- Pay Mr D £75 for his inconvenience (in addition to the £250 it has paid him already).

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr D to accept or reject my decision before 15 June 2018.

Richard Wood
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