

## **The complaint**

Mr C complains that a motorcycle acquired with finance from FirstRand Bank Limited trading as Motonovo Finance wasn't of satisfactory quality.

## **What happened**

In April 2017 Mr C was supplied with a motorcycle and entered into a hire purchase agreement with Motonovo. The total sum payable under the agreement was around £22,000 over a 4-year term.

Mr C experienced issues with the motorcycle consuming large amounts of oil. He returned the motorcycle to the dealership several times between May and December 2019 because of the oil consumption. The dealer topped up the oil but couldn't find a fault.

The issues didn't resolve, and the bike was returned to the dealer again in December 2017, following which the engine was rebuilt. In January 2018 Mr C left the bike at the dealership and said he wanted to reject it. The dealership offered Mr C £15,300 credit for the bike which it said he would have to use with the dealership. Mr C agreed and bought another bike.

Since then, Mr C sought advice and complained to Motonovo. He wants to be compensated for the full value of the bike including the extras he paid for because his request to reject wasn't accepted when it should have been.

In response, Motonovo said that Mr C had refused to collect the bike after repairs had been carried out and that he had subsequently agreed with the dealer that he could part exchange it. It said there had been no agreement to reject the bike.

Mr C was unhappy with the response and complained to this service.

Our investigator upheld the complaint. He said it was likely that there was a fault with the bike because the invoices showed that a lot of work had been carried out to it. The investigator said that although the dealer hadn't found any faults, the engineers report concluded that the bike was consuming excessive oil. The investigator said that because the bike was brand new at the point of supply and had covered less than 7000 miles when the repairs were carried out, a reasonable person would've expected it to be free from defects for longer, so it followed that the bike wasn't durable and therefore not of satisfactory quality. The investigator went on to say that there was no evidence that Mr C had asked to reject the bike and that leaving the bike with the dealership didn't amount to rejection. The investigator said he wasn't persuaded that Mr C had exercised his right to reject before the repairs were carried out, and didn't think the decision to part exchange the bike had been forced on him by the dealer. The investigator said that because Mr C had suffered impaired usage of the bike due to the issues he'd experienced, he should be refunded two monthly instalments and be paid £200 compensation for trouble and upset.

Mr C didn't agree. He said he'd asked to reject the bike before it was repaired, and that in any event, the repairs hadn't been successful because when he collected the bike following the repairs, the engine didn't sound good.

Initially Motonovo didn't agree either. But following a review it accepted the adjudication.

### **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.

Because Motonovo supplied the car under a hire purchase agreement, there's an implied term that it is of satisfactory quality. Bikes are of satisfactory quality if they are of a standard that a reasonable person would regard as acceptable, taking into account factors such as the age and mileage of the bike and the price paid.

Under the Consumer Rights Act 2015, where a fault occurs in the first 6 months, it's presumed that the fault was present or developing at the point of supply unless the business can show otherwise, and it's generally up to the business to put things right. A business is allowed one opportunity to repair the fault. If the repair isn't successful, the consumer can reject the vehicle. After 6 months, the burden of proof is reversed and it's up to the consumer to show that the vehicle wasn't of satisfactory quality.

Based on the evidence I've seen, it seems likely that there was a fault with the bike. Mr C has explained that from around May 2017, he had to return the bike to the dealer for oil top ups. Although the dealer couldn't find a fault, the engineers report obtained by Mr C concludes that the oil consumption was excessive and was likely caused by an issue with the engine. Further, I can see that the dealer carried out extensive work to the engine in December 2017/January 2018. Although the dealer said this was done as a gesture of goodwill, I think it's more likely, looking at the extent of the work, that this was an acceptance that there was a fault and an attempt at repair.

On balance, I'm satisfied that there was a fault with the bike.

Because the oil consumption issues arose in the first 6 months, it's presumed that the issue was present at the point of supply. The bike was brand new at the point of supply, so I'd expect it to be free from minor defects. I don't think a reasonable person would expect this type of fault with a brand-new bike. On balance, I don't think the bike was of satisfactory quality.

Under the relevant legislation, the business is allowed one opportunity to repair the fault. In this case I can see that the dealer carried out repairs in December 2017.

Mr C has said that he asked to reject the bike before the repairs were carried out. The dealer has said it has no knowledge of such a request. Even if Mr C did ask to reject the bike before the repairs were carried out – and I've seen no persuasive evidence that he did – the dealer would still be entitled to one opportunity to repair the fault. So, any request to reject at that point would not be required to be accepted. In any event, I'm not persuaded that a request to reject was made in December 2017.

Mr C has said that following the repairs, the bike was making a noise, so he returned it to the dealer and left it there. He says this amounted to a request to reject.

I've taken account of everything Mr C has said. Having done so, I'm not persuaded that there is enough evidence for me to say that he should've been allowed to reject the bike following the repairs. There's no evidence to show that the repairs carried out by the dealer were unsuccessful, or that there was some other inherent fault which became apparent following the repair. The engineers report doesn't help with this because it doesn't say whether the oil consumption issue was resolved following the repairs, and it doesn't identify

any other faults. I appreciate that Mr C said that the engine was making a noise, but this isn't enough for me to say that the repairs weren't successful, or that there was a new fault

### **Putting things right**

I've explained why I don't think there's enough evidence to support a case for rejection here. That said, I recognise that Mr C experienced several months of oil consumption issues and had to return the bike to the dealer several times. In considering impaired use, I've had regard to the mileage covered by Mr C during this time. I would say that he's covered average mileage. So I don't think his use of the bike was severely impaired. I'm in agreement with the investigator that a refund of two months payments is fair.

Looking at what happened, I also think it's fair to ask Motonovo to recognise the distress and inconvenience Mr C was caused as a result of the bike being of unsatisfactory quality. A sum of £200 compensation is fair to reflect this.

### **My final decision**

My final decision is that I uphold the complaint. FirstRand Bank Limited trading as Motonovo Finance must refund two monthly instalments and pay compensation of £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 23 September 2021.

Emma Davy  
**Ombudsman**