

## **The complaint**

Ms A is unhappy that a motorbike supplied to her under a hire purchase agreement with MotoNovo Finance Limited was of an unsatisfactory quality.

## **What happened**

In May 2022, Ms A was supplied with a new bike through a hire purchase agreement with MotoNovo. She paid a £1,500 deposit, and the agreement was for £1,800 over 37 months, with 35 monthly payments of £55.61 and a final payment of £56.61.

Ms A said that she had problems with the bike as it was leaking anti-freeze and overheating due to head gasket issues. The bike went in for repair in April 2023 and Ms A was provided with a courtesy bike while the repairs were being carried out. However, Ms A has said that the courtesy bike wasn't safe to ride, and that the repairs were unsuccessful.

She complained to MotoNovo, but they didn't agree the repairs had failed. So, Ms A brought her complaint to the Financial Ombudsman Service for investigation. While this matter was under investigation, Ms A part-exchanged the bike and paid off the agreement with MotoNovo, which she says was done at a loss.

Our investigator said that the issues with the bike made it of an unsatisfactory quality when it was supplied. However, Ms A hadn't provided any information that the repairs had failed, nor had she provided anything to show the courtesy bike wasn't able to be used. So, the investigator said that MotoNovo should pay Ms A £150 compensation for the distress and inconvenience caused by being supplied with a bike that wasn't of a satisfactory quality.

MotoNovo didn't agree that the bike was of an unsatisfactory quality when it was supplied to Ms A, as the faults first occurred more than six months after the point of supply. They also said that Ms A hadn't proven that the repairs had failed, or that the courtesy bike was unsuitable. So, they've asked for an ombudsman to make a final 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 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. Ms A 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, MotoNovo 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 MotoNovo can show otherwise. So, if I thought the bike was faulty when Ms A 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 MotoNovo to put this right.

In this instance, it's not disputed there was an issue with the bike supplied to Ms A, nor that this was repaired under warranty. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. Instead, I'll focus on what is still in dispute – whether this fault made the bike of an unsatisfactory quality when supplied.

MotoNovo have said that, as the fault with the bike occurred more than six months after it was supplied to Ms A, the CRA assumes that the fault wasn't present or developing at supply, unless the evidence shows otherwise. And there's no evidence, such as a report from an independent engineer, that shows this was the case.

While I agree with MotoNovo's interpretation of the CRA on this point, as I've explained above, I also need to consider the durability of the bike. Ms A was supplied with a brand-new bike, and any reasonable person would expect this to provide trouble free motoring for a significant period of time. However, the bike failed after about a year, and having done less than 3,500 miles. I don't consider such an early failure, especially such a significant failure that caused overheating and a head gasket issue, could be reasonably expected in a bike of that low age and mileage.

As such, I'm satisfied the bike supplied to Ms A wasn't sufficiently durable, which made it of an unsatisfactory quality at the point of supply. So, I think MotoNovo should do something to put things right.

### **Putting things right**

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 confirm to contract.*" This is known as the single chance of repair. The CRA is also clear that only if the single chance at repair fails and the consumer doesn't agree to an alternative remedy, for example further repairs, do they have the right to reject.

It's not disputed the bike was repaired under warranty. While Ms A has said this repair was unsuccessful, she hasn't provided anything that shows me this was the case. And, as Ms S is no longer in possession of the bike, she is unable to provide me with any such evidence. So, and while I appreciate this will come as a disappointment to Ms S, without evidence that the repairs failed I won't be asking MotoNovo to take any further action in this regard.

Ms A was able to use the bike while it was in her possession, and while it was being repaired she was also provided with a courtesy bike to keep her mobile. Ms S has said that the courtesy bike wasn't suitable as it wasn't safe for her to ride. While Ms A has provided

photos that show some rust on the exhaust system of the courtesy bike, and that there was some shrinkage of plastic covers close to the exhaust system due to heat, these don't evidence that the bike was unsafe to use. As such, I think it's only fair that Ms A pays for her usage, and I won't be asking MotoNovo to refund any of the payments she's made.

Ms A has also said that she part-exchanged the bike and suffered a loss on that deal. While I don't doubt Ms A's testimony on this matter, this was her choice to make. And as I haven't seen anything to show that the bike was still faulty after the warranty repairs, I won't be asking MotoNovo to cover any part of this loss.

Finally, it's clear that Ms A has been inconvenienced by what happened and having to arrange for the bike to be repaired. So, I think MotoNovo should compensate her for this. The investigator had recommended MotoNovo pay her £150, which is in line with what I would've directed had no recommendation been made. So, I see no compelling reason not to adopt this as part of my final decision.

Therefore, MotoNovo should:

- pay Ms A £150 to compensate her for the trouble and inconvenience caused by being supplied with a bike that wasn't of a satisfactory quality.

### **My final decision**

For the reasons explained, I uphold Ms A's complaint about MotoNovo Finance Limited. And they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 2 October 2024.

Andrew Burford  
**Ombudsman**