

The complaint

Mrs F complains about the quality of a motorbike supplied to her by Honda Finance Europe Plc trading as Honda Financial Services (“HF”).

Mrs F has been represented. For clarity, I’ve only referred to Mrs F throughout this decision.

What happened

Mrs F acquired a brand new motorbike under a hire purchase agreement with HF in March 2021. The motorbike cost £9,999. Mrs F part exchanged a vehicle valued at £750 and this was deducted from the amount owed. Under the agreement, Mrs F was required to make 36 monthly payments of £163.08, followed by a final payment of £4,831.25 if she wanted to keep the motorbike. The motorbike was supplied by a garage I’ll refer to as “D”.

Mrs F says in October 2023, the motorbike wouldn’t start as it wouldn’t go into neutral gear. She said she had to have the motorbike recovered at her cost to D. She said several weeks later, the cause of the failure was misdiagnosed and she was then told it would cost £1,350 to repair due to a faulty transmission control module (“TCM”) sensor. Mrs F says she had the motorbike serviced twice and the motorbike had already been recalled by the manufacturer on three separate occasions. In November 2023, Mrs F sold the motorbike back to D and the hire purchase agreement was settled in full.

HF issued its response to Mrs F’s complaint in December 2023. It said D had confirmed the neutral switch and TCM would need to be replaced but this work wouldn’t be covered under warranty. It said it didn’t uphold Mrs F’s complaint due to the length of time that had passed and because Mrs F hadn’t provided any evidence to demonstrate the faults were present at the point of supply.

Unhappy with this, Mrs F referred her complaint to this service. She reiterated her complaint and said she wanted HF to refund the cost of her handing the motorbike back with a fault, the cost of obtaining alternative insurance and an apology. She said the value of the motorbike had it been fully serviced would have been approximately £7,000, but she got less than £5,500.

Our investigator looked into the complaint and didn’t think the motorbike was of satisfactory quality when it was supplied. She said she didn’t think the parts were sufficiently durable and said Mrs F would be entitled to reject the motorbike. She said HF should refund the deposit of £750 and pay Mrs F £150 for any distress and inconvenience caused.

Mrs F didn’t respond. HF disagreed. It said it hadn’t received any evidence to show there was a fault with the motorbike at the point it was supplied to Mrs F. It said the manufacturer had said any part of a vehicle can fail early on depending on how it is maintained. It said there was nothing to show the motorbike had a fault within the first six months and that Mrs F hadn’t given it an opportunity to resolve her complaint, as she reached an agreement with D to part exchange the bike.

As HF remains in disagreement, the complaint has been passed to me to decide.

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.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

I've read and considered the whole file and acknowledge that both parties have raised a number of different complaint points. I've concentrated 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. The rules of this service allow me to do this.

What I need to decide in this case is whether the motorbike supplied to Mrs F was of satisfactory quality. If I don't think it was, I'll need to think what's fair, if anything, to put things right.

The finance agreement in this case is a regulated hire purchase agreement. So our service is able to consider complaints relating to it. HF is the supplier of the motorbike under this type of agreement and so, is responsible for dealing with a complaint about its quality.

The Consumer Rights Act 2015 ("CRA") covers hire purchase agreements. Under a hire purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

The motorbike's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage and price. The CRA says the aspects of the quality of the goods includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and – of particular relevance to this case - durability.

The motorbike Mrs F acquired was brand new. And she was paying around £160 a month to lease it. So, I think a reasonable person would have high standards for the condition of the motorbike when it was supplied and would have expected trouble free motoring for a significant time.

In this case, Mrs F reported that the motorbike cut out in October 2023. This was around three years after it was supplied to her, during which she had been able to cover around 1,500 miles using the motorbike.

After the motorbike cut out, it was taken to D. A job sheet from D confirms the gears were locked and the motorbike wouldn't go into gear. It said the screen was flashing. The job sheet confirms the motorbike needed a new neutral switch at a cost of around £150. A further job sheet from D has been provided from the same day which shows the motorbike needs a new "PGM-DCT UNIT". A DCT is a dual clutch transmission ("DCT"). The repair was initially quoted at around £1,200, but D provided a discount and reduced this to around £1,030.

Having carefully considered this, I'm satisfied the motorbike supplied to Mrs F had a fault as there was a fault with the gears and D confirmed this. I now need to consider whether this fault makes the motorbike of unsatisfactory quality.

The notes from D state:

"Non-start issue investigated. 2 stored and current fault codes: 52-1 and P0851. Followed diagnostic procedure: neutral switch line inspections. All tested okay which indicates a faulty neutral switch and requires replacement.

Health check £153.58.

Neutral switch replaced, DTC still present. Next step: replace TCM".

HF has said it spoke to the manufacturer and it said any part of a vehicle can fail early on depending on how it is maintained.

The job sheet from D confirms in December 2022 when the motorbike had travelled around 1,000 miles, a service was carried out. It states a "3MT recall" (seat belt repair) was carried out in February 2023. The mileage at this point was the same as the mileage recorded in December 2022. A further service was carried out in March 2023. At this point, the motorbike had travelled around 1,200 miles.

So, thinking about this, I agree that specific parts on a vehicle can fail early on depending on how they have been maintained. However, in this case, looking at the motorbike's service records, I'm satisfied that the motorbike has been serviced and maintained correctly. So, I'm not persuaded with the statement made by HF, that in these specific circumstances, the TCM may have failed due to the way in which the motorbike was maintained.

The motorbike was brand new at the time it was supplied to Mrs F. One of the considerations of whether goods are of satisfactory quality is durability. Here, the TCM failed and needed replacing after it had travelled around 1,200 miles and was around three years old.

Having thought about this, I think a reasonable person would consider that a TCM would last longer than this. I appreciate that Mrs F was able to use the motorbike for some time before it cut out and a TCM may fail due to use over a period of time. But the TCM is a part that a reasonable person would expect to last considerably more than around 1,200 miles. It wouldn't be reasonably expected that a motorbike would suffer a major component failure, without any prior notification, considering the age and mileage at the time the motorbike failed.

HF has mentioned that the fault didn't occur within the first six months. Whilst I accept this, I think it was likely developing at the point of supply, given it presented itself after Mrs F had only been able to travel 1,200 miles.

There has also been no indication from any party that Mrs F caused the fault or that it was due to the way in which the motorbike was being driven. And so, given Mrs F maintained the motorbike as she was expected to, I don't think the TCM was sufficiently durable. It follows that I don't think the motorbike was of satisfactory quality when it was supplied to Mrs F.

I've gone on to think about what HF needs to do to put things right.

Mrs F no longer has the motorbike as she part exchanged it with D. This cleared the outstanding finance owed under the agreement. Had Mrs F remained in possession of the motorbike, I would have decided that Mrs F could reject the motorbike because D had already attempted to repair the motorbike, without success. Whilst I won't be able to put Mrs F back in the exact same position she would have been in, had she been able to reject the motorbike, I've considered what I think is most fair in the circumstances.

As part of the hire purchase agreement, Mrs F part exchanged a previous vehicle. The value of the part exchange, £750, was put towards this hire purchase agreement. HF should refund this amount to Mrs F, with applicable interest.

Mrs F would like HF to refund the difference between the amount she accepted for the value of the motorbike when it was faulty and the amount she would have got had it not been faulty. However, no supporting information has been provided to show what the value of the motorbike would have been had it not been faulty at the time Mrs D says it was agreed to be taken back by D. And valuations can fluctuate depending on a number of different reasons. No supporting information has been supplied by any party to confirm what, if any, factors impacted the price D agreed to pay for the motorbike when it was handed back. In addition, had Mrs F rejected the motorbike, she would have simply handed the motorbike back with nothing further to pay. And so, I'm not persuaded that HF need to refund the difference here.

I understand that Mrs F had to cancel the motorbike's insurance, so a new insurance policy could be obtained for a new motorbike. Mrs F has provided supporting information which shows the cost of the cancellation was £72.53. She said the new motorbike needed a specialist insurer and so, the existing insurance policy couldn't be transferred over. However, the insurance policy appears to be in a third party's name. As Mrs F is the customer of HF, I can only consider her loss. And so, because Mrs F hasn't incurred the cost of insurance cancellation, I don't consider that HF should pay this amount.

Mrs F has explained that when the motorbike broke down, says she had to join a roadside assistance firm, obtain a membership and then it was recovered to D. She said she had to pay for the cost of the membership. Whilst Mrs F hasn't provided any supporting information to confirm this, I think its likely Mrs F did obtain this membership and that it was at a cost to her. Notes from D's job sheet in October 2023 make reference to a roadside assistance company. Having said this, it seems Mrs F chose to obtain a new membership for a couple of weeks when may have instead chosen to contact a recovery company at a one off cost, rather than obtaining a membership. So I don't think HF should pay this cost.

I've also considered the impact of the faults with the motorbike. Mrs F says the motorbike was recalled three times. Supporting information suggests the motorbike was only recalled on one occasion. However, I accept that the recall combined with the TCM fault caused Mrs F distress and inconvenience. I say this because Mrs F had to take the motorbike back to D for the recall and have the motorbike recovered to D after it cut out. Mrs F also said she had been able to cover around 12,000 miles on previous motorbikes in a three year period. However, she had only been able to cover 1,200 miles in the same period with this motorbike due to the numerous faults with it.

Having considered the impact Mrs F has detailed, I'm persuaded she was caused distress and inconvenience as a result of the fault with the motorbike. And so I think HF should pay Mrs F £150 to reflect the distress and inconvenience caused.

My final decision

My final decision is that Honda Finance Europe Plc trading as Honda Financial Services should put things right by doing the following:

- Refund the deposit Mrs F paid of £750;
- Pay Mrs F 8% simple interest on this amounts from the date of payment until the date of settlement*;
- Pay Miss E £150 for the distress and inconvenience caused**; and
- Amend any adverse information reported to credit reference agencies about this hire purchase agreement.

*If Honda Finance Europe Plc trading as Honda Financial Services considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mrs F how much it's taken off. It should also give Mrs F a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

If Honda Finance Europe Plc trading as Honda Financial Services does not pay this £150 compensation for inconvenience and distress within 28 days of the date on which we tell it Mrs F accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 6 August 2024.

Sonia Ahmed

Ombudsman