

The complaint

Mr S complains about a motorbike acquired through a Hire Purchase agreement with Black Horse Limited ('Black Horse'). Mr S said when his engine was being upgraded, metal debris was found in the engine. This was repaired under warranty, but he was left without a bike while still paying for it.

What happened

Mr S acquired the bike in June 2022. When it was sold, it was brand-new and cost £28,295.

When he was getting an engine upgrade through the dealership in March 2024, the engine was taken apart and the technician found metal debris inside the engine block.

Mr S said the technician advised this metal 'swarf' stemmed from the original machining of the engine and it was lucky it hadn't already experienced issues.

Mr S thinks Black Horse misinterpreted what the dealer said about the issue and thinks the amount of work carried out indicates there was a problem that required attention.

He wanted compensation for the time he was unable to use the bike.

I've seen a number of job sheets from April 2022 to July 2023, where a variety of service-related work seems to have been carried out. These don't raise any obvious issues that are of relevance to this complaint.

The first documentary evidence I have of the issue at hand is a job sheet which says "*found swarf in lifter bore...checked with technical and instructed to refit.*"

Black Horse seems to have sought clarification from the dealership, who said, "*the technician found the right thing to do was change parts and clean out. It was the opinion if we didn't do anything would've potentially caused an issue*" [sic]

Black Horse responded to the complaint, saying the amount of time and use since the bike was supplied meant it wasn't plausible that the issue complained of was present at the point of supply. It said the swarf present in the engine was cleaned and parts were replaced as a precaution. And the marks and rough edges on the remaining components wouldn't impact the engine operating as expected. So it didn't uphold the complaint.

Black Horse has also highlighted the servicing requirements for the bike. This required services to be carried out at 1,000 and 5,000 miles – and at these services no issues were found with the bike. So this indicated there was no fault at the point of supply.

It said the additional pressures to the engine caused by the intended modification meant it was necessary to replace the parts and the work carried out was done as a precaution – and this wasn't connected to any issue that would've been present at the point of supply.

The investigator considering the complaint thought there wasn't documentary evidence to confirm repairs were only done as a precaution or that this wasn't a fault that was developing at the outset. They thought Black Horse should be responsible for the payments while the warranty work was being carried out.

Black Horse felt the evidence showed there wasn't a fault at the point of supply. When the dealer inspected the bike they couldn't find a fault, and it wouldn't be fair to hold it responsible for a future fault that may never happen.

Additionally it said the work completed was necessary only in relation to unauthorised modifications – with Black Horse being the owner of the goods and authorisation technically being needed under the agreement – and wouldn't have been required otherwise. It thought it was unfair to hold it responsible for work carried out in these circumstances.

It said the presence of metal swarf came about from the normal operation of the bike and the modification carried out post-sale would put extra strain on the engine. The usual swarf that might be created during normal operation, might cause a problem to a modified engine in future, but that doesn't mean the bike wasn't of satisfactory quality at the outset.

Black Horse asked for the case to be reviewed by an ombudsman and so it has been passed to me to issue 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 outcome as the investigator – and for essentially the same reasons.

I'm required to take into account the relevant laws and regulations; regulators rules, guidance, and standards; codes of practice and, when appropriate, what I consider to have been good industry practice at the relevant time. I may not comment on every point that's been raised, but I have read and considered everything that's been said. Instead I will focus on what I think are the key points to reach a fair and reasonable decision. This reflects the nature of our service which was set up to be an informal alternative to the courts.

Where information or evidence is missing or contradictory, I'll make my decision based on the balance of probabilities – that means what I consider to have more likely than not happened – given the available information.

I will lay out what I consider to be the key facts and the considerations I've taken into account when reaching my decision.

Mr S acquired the bike through a Hire Purchase agreement with Black Horse. Under this type of arrangement, Black Horse became the supplier of the bike and is responsible if the goods aren't of satisfactory quality when provided. The key legislation for me to consider in complaints of this nature is the Consumer Rights Act 2015 ('CRA'). This outlines, among other things, that goods should be of satisfactory quality at the time they're supplied.

Satisfactory quality is described as the standard that a reasonable person would expect taking into account, among other things, the description, age and price of the goods. The quality of the goods includes their state and condition - and where appropriate their fitness for purpose, appearance, freedom from minor defects, safety and durability should be taken into account.

The bike was provided brand-new and as such it should have been free from even minor defects and sufficiently durable such that no issues would be experienced for a considerable amount of time. If any issues arose or attention was required then it would be reasonable for this to be attended to and for this to be done at no expense to Mr S.

So I've considered the nature of the issue at hand and what that means for Mr S's complaint.

As I've said above, the original job sheet says *"found swarf in lifter bore...checked with technical and instructed to refit."*

Black Horse has framed this as meaning that the work was carried out solely in order to facilitate the subsequent upgrade. However there isn't persuasive evidence to support this. This note is not qualified in a way that supports Black Horse's argument.

A further clarification from the dealership said *"the technician found the right thing to do was change parts and clean out. It was the opinion if we didn't do anything would've potentially caused an issue"*

The dealership had separately confirmed there was no fault with the bike at the time. While there was no mechanical fault, and the scratches found to the components that remained wouldn't impact their function, that's not the same thing as there having been no issue whatsoever.

It's clear that the dealership had concerns about the presence of this level of swarf – regardless of how this was diagnosed.

Black Horse has pointed out that Mr S's agreement requires him to get Black Horse's permission before making any modifications to the bike. I can't see any evidence for Mr S having done so. This may be because Mr S wasn't aware, and I can see this provision is on page six of eight of the agreement and isn't particularly prominent, so I'm not necessarily surprised by that.

However, while Black Horse has referred to the term within the Hire Purchase agreement, it has not actually said that it would not have permitted the modification. I also don't see any reason why Black Horse would have objected to the manufacturer modifying the engine with that manufacturer's parts. This upgrade is relatively commonplace for this type of bike and could easily have taken place prior to sale and formed part of the goods under the agreement. Although it was upgraded later, and without Black Horse's express permission, I don't think this is a significant sticking point about whether the bike was of satisfactory quality at the time it was first supplied to Mr S.

Additionally it's not the modification that caused the issue, it was during the modification work that the issue was discovered. So the modification itself has no connection to the issue that was discovered. Whether the modification might increase the likelihood of future issues is another matter. However this doesn't mean that without the modification, there was no likelihood of future issues being caused by what was discovered.

Black Horse contends that the earlier services didn't highlight any issue with the engine and this indicates the bike was of satisfactory quality. Black Horse has provided a copy of the maintenance schedule, but it hasn't demonstrated which specific aspect of this would have highlighted the issue complained of. I can't see any obvious element of the service that would have diagnosed the specific issue complained of.

The aspects of the maintenance schedule provided seem to be less in-depth than the engine strip that brought this issue to light. So I'm not persuaded that the earlier services would have found the issue if it had been present. Even if any element of these checks could have diagnosed this issue, it seems the issue is one that would have worsened over time and at those early stages may not have been as evident.

Nevertheless, the issue was found and work was carried out under warranty in order to prevent future damage to the engine and its components.

Black Horse hasn't provided any evidence that the replacement parts and work carried out were necessitated solely by the upgrade. The evidence provided indicates the degree of swarf required refitting the parts. There's no mention of this being only due to the engine upgrade.

Black Horse has said the breaking in of a new bike is usual and this swarf build up is linked directly to that normal breaking in process. However if this was entirely to be expected, and there was enough material found at this time to warrant action, it's not clear how it wasn't picked up during earlier services.

Additionally, a technician who is qualified and able to carry out an engine upgrade would presumably be familiar with the usual swarf build up stemming from the usual breaking in of a new bike. However the dealership's in-house technician needed to seek outside technical advice on the issue, so it doesn't seem as though this would fall into the description Black Horse is arguing, i.e. the result of the usual breaking in of the bike.

The investigator who investigated the complaint gave Black Horse the opportunity to seek evidence to support its contention that the issue as it presented was to be expected and in line with the normal operation of the bike, that the repairs were solely carried out directly in connection to the engine upgrade and that the engine wouldn't have required future repairs in any event. It did not provide further evidence to support its position.

The issue was clearly significant enough to warrant remedial action. There's nothing to say that this action was taken only because of the upgrade. The technician would have been familiar with the normal breaking in of new bikes and I don't think outside technical help would've been required to deal with a routine issue like that. I think it's therefore more likely that this issue fell outside of what would normally be expected.

Because this excess swarf required repairs under warranty, I'm satisfied the bike wasn't of satisfactory quality at the point of supply when considering the CRA, the broader circumstances of this complaint and the evidence provided.

Putting things right

I don't think it's fair that Mr S had to pay for the bike while he didn't have it as a result of the repairs being carried out under warranty. Like the investigator I think he should be refunded his payments for the time the warranty repairs were being carried out, but not for the modifications.

A job sheet I have shows the bike was being worked on from at least 29 January 2024 to 15 March 2024. Mr C said he was due to pick up the bike after the upgrade was completed on 30 January 2024. However once the warranty related repairs were carried out, along with the engine upgrade, he collected the bike on 18 March 2024.

So it seems as though the warranty repairs extended the time in the dealership by roughly a month and a half. I think that reflects the time the repairs were carried out under warranty

and the time he was without the bike. His monthly payments during that time equate to roughly £400, and I think it's fair that Black Horse pays him this amount.

My final decision

My final decision is that I uphold Mr S's complaint against Black Horse Limited. It should pay Mr S £400.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 30 December 2024.

Scott Walker
Ombudsman