

## The complaint

Mr N complains about a motorbike supplied to him on finance by Blue Motor Finance Ltd ('BM').

## What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my informal remit.

BM supplied Mr N with the bike in late April 2023 via a hire purchase agreement. However, Mr N said he took it to a garage which identified that it was in poor condition and needed repair work including a replacement sprocket and chain. Subsequently, the chain snapped and which Mr N says has caused further damage to the bike's engine.

Mr N complained to BM about the quality of the bike – but it did not uphold the complaint.

Mr N escalated his complaint to this service – and our investigator upheld it.

BM disagreed with the outcome. In summary, it says that:

- the initial issues identified with the bike were related to reasonable wear and tear; and
- Mr N continued to ride the bike after these issues were identified which caused further damage.

I issued a provisional decision on this matter which says:

### ***What I've provisionally 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.*

*While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.*

*The Consumer Rights Act 2015 is of particular relevance to this complaint. It says that under a contract to supply goods, there is an implied term that "the quality of the goods is satisfactory".*

*The Consumer Rights Act 2015 says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.*

*The Consumer Rights Act 2015 ('CRA from here') says the quality of the goods includes*

*their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.*

*BM supplied Mr N with a second-hand bike around seven years old and with around 38,000 miles on the clock. So I think it's fair to say that a reasonable person would expect it to have more wear and tear than a brand new or newer bike. And that might mean repairs and maintenance are required sooner than on a less road-worn vehicle.*

*However, while Mr N would expect some added wear and tear, servicing and maintenance issues – the reasonable expectation of these would also relate to the description of said goods at the point of sale, along with the price paid. Here I note Mr N paid around the market value for the bike and the archived description of the bike says:*

*'all round good clean condition...with one former keeper and full up to date [manufacturer] service record with annual service and MOT to be carried out by us prior to sale'*

*This description is consistent with what Mr N says he was told by the dealer about the bike at the point of sale. I think it is fair to say this description would lead a reasonable person to conclude that the bike:*

- *had been fully maintained in accordance with the manufacturers service requirements, which appear to be (from information I have found online):*
  - *Oil service around every 7,500- 9,000 miles*
  - *Major service around every 15,000-18,000 miles*
- *had recently received its annual service.*

*It appears that if the above were the case – at 38,000 miles at the point of supply the bike would not need an oil service for around 7-8 thousand miles. And it would not be needing its annual service for about 12 months. In regard to the major service – which Mr N says the dealer told him had been done before sale this (presuming it was done at 18,000 intervals and at 36,000 miles) would not need doing for around 16,000 miles.*

*However, the information Mr N has provided indicates that the bike had not been maintained in the way the dealer described it. He said that within 100 miles the major service light came on which prompted him to book it into the manufacturer's dealership to get it checked.*

*It appears the dealership wasn't able to look at the bike straight away so Mr N had to wait. Eventually he had the bike inspected by it about two months after taking delivery. It identified, amongst some other things:*

- *a major service light was illuminated*
- *low engine oil (advisory)*
- *chain and sprockets worn and needed urgent attention*
- *front offside disc needed urgent attention*

*My overall impression from the inspection report is that the bike had not been serviced and maintained in the way the dealer had described it. And that it wasn't in a condition that would be considered of satisfactory quality in the particular circumstances.*

*I note that Mr N had covered around 2,000 miles at the point the bike was inspected. And from what I have read (and what BM has said) that is notable mileage for a bike. However, even with that in mind I don't think the addition of around 2,000 miles explains the condition of the bike when the inspection took place. Noting that from the way it was sold it appeared not to be due a major service or oil service for many thousand more miles than Mr N had*

completed – and had (in theory) a recent annual service. I also note that Mr N's credible testimony is that the major service light had appeared shortly after he took it away – which doesn't seem right considering the advert and what he says the dealer told him at the point of supply.

I also note that our investigator has referred to a 'report' by the manufacturer stating that the bike ought not to have been sold in this condition. I can't find something which says this in the format of a traditional report on our file – however, I note that Mr N has provided an email from the manufacturer's dealer he took it to for inspection which says that it would not have sold the bike in the condition it was presented to them in. I appreciate that it saw the bike with roughly an additional 2,000 miles on the clock to when it was actually sold to Mr N – so it naturally would have suffered more wear and tear. But considering the way the bike was described at the point of sale I think it is telling that the dealer said that it was not in an acceptable condition for re-sale when they saw it.

I also note that BM has confirmed that its dealer ('Dealer A') said that the report Mr N obtained misdiagnosed the bike – and it didn't need a new chain and sprocket and had passed two MOTs without issues. Mr N has confirmed that when he contacted dealer A it would not help him with the repairs needed and disputed that they were required. However, I disagree that Mr N had the bike misdiagnosed. I say this because:

- the report Mr N got was from the manufacturers authorised workshop – and appeared credible (and I don't see any credible report from dealer A showing otherwise);
- the events that transpired proved it was correct – Mr N says the chain snapped and the assembly needed replacing at a cost of £1,434.07 and caused consequential damage to the engine which is going to require repairs costing £1,815.56 (and he has provided invoices/estimates and commentary from an engineer supporting this)

I also think that a vehicle passing an MOT, while a test of roadworthiness in that moment, is not the same as showing a car is satisfactory quality at the point of sale. Satisfactory quality as I have said is focused on the expectation of the reasonable person taking into account all the relevant factors. With this in mind, and noting the evidence discussed including the description of the bike and the mileage Mr N had covered when he got the inspection done I don't consider that the bike was of satisfactory quality at the point of sale

So prima facie I consider that BM is liable for the out of pocket costs Mr N has incurred in paying for the repair to the chain/sprocket assembly already. And for the consequential damage it caused to the engine.

I note that BM has pointed out that Mr N continued to drive the bike after the worn parts had been identified – and I think it is implying that he is culpable for the consequential damage to the engine. I have carefully thought about this. However, overall I don't think it fair and reasonable to hold Mr N responsible for the engine damage. I say this because I don't think anyone told Mr N he shouldn't be using the bike. And also because he says that after the problems were first identified he was trying to get Dealer A to sort out the repairs but it was unhelpful. From what BM has said I can believe that Dealer A was not willing to acknowledge the bike needed any work. So it appears Mr N was in a difficult position where he needed a mode of transport and wasn't able to get costly repairs done without Dealer A's co-operation.

Had BM's dealer been more helpful I don't think it likely the consequential damage would have occurred. And because the bike was not of satisfactory quality it should have helped here. So I don't think Mr N should fairly be responsible for the consequential damage here.

### *Putting things right*

*From what I understand Mr N had repairs on the bike to replace the sprocket and chain and been invoiced for these for £1,434.07. He should fairly get this back for reasons I have explained above.*

*However, because there are further repairs required I have thought about what would be a fair remedy here. I note that the quote for these repairs is £1,815.56. However, I have factored in that:*

- Mr N has already had the bike repaired once;*
- the need for more repairs has caused and is likely to cause significant inconvenience; and*
- the cost of ongoing repairs is now becoming disproportionate when compared to the total cost of the bike.*

*So looking at the remedies in the CRA and what is fair and reasonable here I think the remedy of rejection is the most appropriate here. This does not stop the parties coming to some alternative arrangement if they wish to – but for the purposes of my decision I am currently minded to direct rejection.*

*Therefore, I propose BM take back the bike and unwind the agreement at no cost to Mr N. It should also refund him his deposit of £500 and for the months he has been paying for, but not using, the bike. From what I understand this is from 12 July 2023.*

*I am not clear if Mr N has been taxing and insuring the bike since 12 July 2023 – but if so BM should reimburse him for this on production of proof of payment.*

*I also see that the ongoing situation has caused Mr N notable distress and inconvenience. Had BM recognised that the bike was not of satisfactory quality and taken it back then I think this would have been minimised. Deciding a figure of compensation is not a science here. However, I have considered what Mr N has said and I think the impact on him has been more than minimal and gone on over an extended period. I think £350 is a fair payment here.*

### **My provisional decision**

*I uphold this complaint and direct Blue Motor Finance Ltd to:*

- Take back the bike and unwind the finance agreement at no further cost to Mr N;*
- ensure there is no adverse information in relation to the finance agreement remaining on Mr N's credit file;*
- refund Mr N his deposit of £500;*
- refund Mr N all rentals that relate to the period following 12 July 2023;*
- reimburse Mr N for the repairs he has been invoiced for to date totalling £1,434.07;*
- reimburse Mr N for tax and insurance costs (if applicable) and on production of valid proof of payment from 12 July 2023;*
- pay interest calculated at 8% simple yearly from the date of payment to the date of settlement; and*
- pay Mr N £350 compensation.*

*If BM considers it should deduct tax from my interest award it should provide Mr N with a certificate of tax deduction.*

*Note that any reference to 'car' in my provisional decision would be taken to include other*

vehicles such as a bike.

I asked the parties to respond:

BM says that it disagrees that Mr N should not be responsible for the damage caused to the bike after the faults were diagnosed – it says he was clearly fully aware that continuing to ride the bike could cause further problems.

Mr N says that he is satisfied with the decision but would also accept the option of keeping the bike if BM would take it back and fix the issues and return it. He also confirmed that he has kept the tax and insurance going on his bike while it has been off road.

### **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.

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision alongside the points below:

- I have already explained in some detail in my provisional findings why I don't consider that Mr N is at fault for the consequential damage to the bike – I stand by this and do not see the merit in repeating it.
- I acknowledge that Mr N is willing to keep the bike and have it repaired but after considering the remedies as set out in the CRA I am not going to direct BM to do this because of the potential ongoing inconvenience, and the fact that on the face of it the cost of repairs is becoming disproportionate to the cost of the bike. This of course does not stop Mr N rejecting my decision if the parties come to some other settlement – but Mr N will need to carefully consider this as it will be outside of any binding settlement through this service and might impact his right to complain about the quality of the bike in the future if things don't work out.

I note that Mr N has confirmed he is still taxing and insuring the bike – so BM will need to reimburse this in accordance with my final decision as set out below.

### **Putting things right**

If Mr N accepts my decision BM will need to carry out the settlement as detailed below.

### **My final decision**

I uphold this complaint and direct Blue Motor Finance Ltd to:

- Take back the bike and unwind the finance agreement at no further cost to Mr N;
- ensure there is no adverse information in relation to the finance agreement remaining on Mr N's credit file;
- refund Mr N his deposit of £500;
- refund Mr N all rentals that relate to the period following 12 July 2023;
- reimburse Mr N for the repairs he has been invoiced for to date totalling £1,434.07;
- reimburse Mr N for tax and insurance costs on production of valid proof of payment from 12 July 2023;
- pay interest calculated at 8% simple yearly from the date of payment to the date of settlement; and
- pay Mr N £350 compensation.

If BM considers it should deduct tax from my interest award it should provide Mr N with a certificate of tax deduction.

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

Mark Lancod  
**Ombudsman**