

complaint

Mr T complains that a motorbike that was supplied to him under a conditional sale agreement with Close Brothers Limited, trading as Close Brothers Motor Finance, wasn't of satisfactory quality. He's being helped with his complaint by his daughter-in-law.

background

A motorbike was supplied to Mr T under a conditional sale agreement with Close Brothers that he electronically signed in March 2017. The agreement says that the bike was used but its mileage is shown as being only two miles. He used the bike for more than a year but then had a number of issues with it including a bent side stand, a cracked exhaust, the chain and sprocket corroding and the bike cutting out. He contacted the dealer which said that the bike was out of warranty so Mr T complained to Close Brothers.

He had the bike inspected by an independent expert who said that items on the bike had failed prematurely and should've lasted far longer than they had before failing. But Close Brothers said that there was no evidence that the issues would've been present when the bike was supplied to Mr T – so it didn't uphold his complaint. Mr T wasn't satisfied with its response so complained to this service.

The adjudicator recommended that this complaint should be upheld. He didn't think that it was reasonable to expect such serious faults to appear after the bike had been used so little. He'd said that Close Brothers should cover the cost of repair or replacement of the bike's exhaust and engine breather pipes and Mr T had provided it with a quote of £1,332.04 for that work. But Close Brothers said that those repairs weren't financially viable in relation to the cost of the bike and it said that there was no evidence that the faults were present when the bike was supplied to Mr T.

So he thought that Mr T should be allowed to reject the bike. And he recommended that Close Brothers should: collect the bike; remove the agreement from Mr T's credit file; refund all the monthly payments he made from when he complained in September 2018 to when the agreement was settled in February 2019 (with interest); and refund the deposit paid by Mr T and the tax and insurance payments he made from when he complained in September 2018 (all with interest).

Close Brothers has asked for this complaint to be considered by an ombudsman. It says that it's put the figures to the dealer as it will be responsible for the costs and this isn't an outcome that it was willing to accept at this stage.

my provisional decision

After considering all of the evidence, I issued a provisional decision on this complaint to Mr T and to Close Brothers on 5 February 2020. In my provisional decision I said as follows:

“Close Brothers, as the supplier of the motorbike, was responsible for ensuring that it was of satisfactory quality. Whether or not it was will depend on a number of factors, including the age, and mileage of the bike and the price that was paid for it. I consider that the bike that was supplied to Mr T was new as its mileage was shown on the agreement as only two miles. And I consider that it was reasonable for him to expect that it would be free from even minor defects. Satisfactory quality also covers durability which means that the components within the car must be durable

and last a reasonable amount of time – but exactly how long that time is will depend on a number of factors.

Mr T was able to use the bike without any issues for more than a year but he says that he then had a number of issues with it including a bent side stand, a cracked exhaust, the chain and sprocket corroding and the bike cutting out. He contacted the dealer which said that the bike was out of warranty so he complained to Close Brothers in September 2018.

The bike was inspected by an independent expert in September 2018 and the expert said:

“Upon inspecting the exhaust system and engine breather pipes on the above vehicle I am of the opinion that the failure of the exhaust is due to a manufacturing fault, the fracture in the silencer is not something that can be attributed to external causes or any lack of the owners care or maintenance, the general condition of the motorcycle is very good having covered only 2734 Miles from new in March 2017, likewise the cracking of the engine breather pipes is purely a material fault, it is of my opinion with over 30 years' experience in the motor trade that these items have failed prematurely and should have lasted far longer than they have before failing”.

There doesn't seem to be any dispute that there are issues with the bike. But Close Brothers says that there's no evidence to show that the issues were present when the bike was supplied to Mr T. I consider that it was a new bike and that it was reasonable for Mr T to expect it to last for longer than it has (and for it to be ridden for considerably more than 2,734 miles) without needing such major repairs. So I consider that the bike wasn't as durable as it was reasonable for Mr T to expect it to be – and for that reason it wasn't of satisfactory quality when it was supplied to him.

And I consider that it would be fair and reasonable for Close Brothers to allow Mr T to reject the bike. He settled the agreement in February 2019 and made a statutory off road notification about the bike in the same month. He says that he hasn't used the bike since he first complained to Close Brothers because it's unsafe and unusable.

I find that it would be fair and reasonable for Close Brothers to collect the bike from Mr T and to refund to him the payments that he made for it from the date that he first complained to Close Brothers in September 2018.

Mr T paid £800 to Close Brothers in May 2017 - in addition to the usual monthly payment of £65.70 - and the agreement shows that he paid a deposit of £600 for the bike (which has been confirmed by Close Brothers). I find that it would be fair and reasonable for Close Brothers to refund that deposit and the £800 payment to him (with interest). Mr T has paid for the bike to be taxed and insured and I consider that Close Brothers should reimburse him for those payments that he made from when he complained to it in September 2018 until the statutory off road notification was made for the bike in February 2019 (but Mr T will need to provide it with evidence of those payments). I consider that it should also remove any information about the agreement from Mr T's credit file.

So in addition to the recommendations made by the adjudicator, I consider that it would be fair and reasonable for Close Brothers to also refund to Mr T the £800 that he paid to it in May 2017 (with interest)”.

So subject to any further representations by Mr T or Close Brothers, my provisional decision was that I was minded to uphold this complaint. Mr T has accepted my provisional decision but Close Brothers hasn't responded to it.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. As Close Brothers hasn't responded to my provisional decision, I see no reason to change the conclusions that I reached in it.

my decision

For the reasons set out above, my decision is that I uphold Mr T's complaint and I order Close Brothers Limited, trading as Close Brother Motor Finance, to:

1. Arrange for the motorbike to be collected from Mr T at no cost to him.
2. Refund to Mr T the deposit of £600 that he paid for the bike.
3. Refund to Mr T the payment of £800 that he made for the bike in May 2017.
4. Refund to Mr T the monthly payments that he's made under the agreement from when he complained to it in September 2018.
5. Reimburse Mr T for the payments that he made to tax and insure the bike from when he complained to it in September 2018 until a statutory off road notification was made for the bike in February 2019 (but Mr T will need to provide it with evidence of the payments).
6. Pay interest on the amounts at 2, 3 and 4 above at an annual rate of 8% simple from the date of each payment to the date of settlement.
7. Remove any information about the agreement that it's recorded on Mr T's credit file.

HM Revenue & Customs requires Close Brothers to deduct tax from the interest payment referred to at 6 above. Close Brothers must give Mr T a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 30 April 2020.

Jarrold Hastings
ombudsman