

complaint

In November 2012, Mr B purchased a brand new motorcycle under a conditional sale agreement with Close Motor Finance Limited. He complains that the motorcycle exhibited a number of faults in the period up to April 2013, and he wishes to reject the motorcycle.

background

Close and the dealership from which the motorcycle was purchased responded to faults reported by Mr B relating to:

- The fuel cap and speedometer;
- Problems starting the motorcycle;
- The motorcycle's camshaft;
- Its exhaust system; and
- Its rear brake.

Close said that most of the work required to resolve these problems was not covered under warranty. It reported that the dealer felt repairs would not have been required if the motorcycle had been maintained correctly, but that the dealer had absorbed costs not covered by warranty as a gesture of goodwill.

Mr B did not accept that the faults arose from incorrect maintenance. The motorcycle was returned to him after repairs were completed, but he said it was with the dealer for a week on two separate occasions while being repaired.

In April 2013, Mr B reported a further problem to Close, this time with the drive chain. Close replied that the dealer had offered to assess the problem, but Mr B was unwilling to agree with this way forward, saying that he was no longer prepared to accept the continuing faults and wished to reject the motorcycle.

Close responded to say that, as far as it could see, there had not been a problem with the chain previously, at any time during the period from when the motorcycle was purchased. It did not accept, therefore, that Mr B could reject the motorcycle. Mr B cancelled his direct debit authorising Close to take monthly payments, and referred his complaint to the Financial Ombudsman Service.

Our adjudicator thought the complaint should be upheld. He noted that, as the motorcycle was purchased under a conditional sale agreement, the agreement is covered by the 1979 Sale of Goods Act. The Act sets out certain implied terms in the contract of sale, and means the goods supplied must be of satisfactory quality. He added that, as the goods in this instance were brand new, he would expect them to be fit for purpose and free from even minor defects.

Our adjudicator did not think that Mr B should have stopped making his monthly payments. However, having considered the faults complained about and the repairs undertaken, our adjudicator felt unable to conclude that the motorcycle supplied was of satisfactory quality. He thought it unreasonable that the motorcycle had developed so many faults within such a short space of time.

In October 2013, our adjudicator recommended that:

- The agreement should be cancelled, Mr B should not be pursued for any further payment, and his deposit should be refunded (with interest).
- Close should ensure no adverse entries relating to this agreement remain on Mr B's credit file.
- Mr B should not receive a refund of payments already made under the agreement, as he has had use of the motorcycle over this period.

Close disagreed, saying that the chain fault was a maintenance issue for which it should not be liable, and that previous faults had been satisfactorily rectified. Mr B responded to say that he did maintain the chain, and that the chain fault arose from a problem with the motorcycle's sprockets.

In November 2013, Close issued a default notice to Mr B. The motorcycle was repossessed and sold at auction.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where evidence is incomplete or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and the wider circumstances.

The motorcycle was not subjected to an independent inspection before it was sold at auction, and so evidence that might have resolved some contradictory statements is not available. Based on the available evidence and arguments, I find that I have come to the same conclusion as our adjudicator, for the same reasons.

Mr B's complaint relates to a number of problems he experienced with the motorcycle. It is not only about the chain fault, although this appears to have been the issue that caused him to decide to pursue rejection, some five months after having acquired the motorcycle.

It may be that Mr B did not look after the motorcycle to the highest standards but, on balance, I am unable to conclude that the continuing faults arose simply from less than optimal maintenance. Therefore, again on balance, I agree with our adjudicator it is not possible to conclude that the motorcycle was of satisfactory quality when it was supplied to Mr B.

Taking into account all the motorcycle's faults, and how early in its life I believe it was not of satisfactory quality – and even though some problems were repaired – I can see why Mr B decided to reject it. I also think, on balance, that it was fair for him to make this decision when he did.

my final decision

My final decision is that I uphold this complaint. In full and final settlement, I order that Close Motor Finance Limited:

1. Cancels its conditional sale agreement with Mr B.
2. Refunds to Mr B the deposit paid at the start of this agreement, plus interest calculated at 8% per year simple from the date the payment was made to the date of settlement.
3. Refrains from pursuing Mr B for any further payment, while not refunding payments already made.
4. Ensures that no adverse entries relating to this agreement remain on credit files about Mr B, held by credit reference agencies.

Roy Mawford
ombudsman