

complaint

Mrs G complains about issues she's experienced with a motorcycle supplied under a finance agreement with Santander Consumer (UK) Plc.

background

In July 2017 Mrs G was supplied with a new SYM Jet motorcycle and entered into a loan agreement with Santander.

Mrs G experienced issues with the motorcycle cutting out and returned it to the garage for repairs. The garage repaired the motorcycle twice.

Mrs G complained to Santander in January 2018. She said the motorcycle wasn't of satisfactory quality and asked to reject it. Santander refused to cancel the credit agreement. It said the faults were due to lack of maintenance.

Mrs G continued to experience issues with the motorcycle and complained to this service.

The investigator didn't uphold the complaint. He said there was no evidence to suggest that the motorcycle was of unsatisfactory quality and that the faults (other than the split wiring) had been caused by poor maintenance and lack of servicing.

Mrs G didn't agree so I've been asked to make a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mrs G relies on the rights that she has under Section 75 of the Consumer Credit Act 1974. I think it's important to set out my role here. In considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under Section 75. In deciding what's a fair way to resolve Mrs G's complaint, I've taken Section 75 into account. But that doesn't mean I'm obliged to reach the same outcome as, for example, a court might reach if Mrs G pursued a claim for breach of contract or misrepresentation.

Because Santander has supplied the motorcycle under a fixed sum loan agreement it is equally responsible with the supplier if there has been a breach of contract. There is a legal requirement that the motorcycle has to be of satisfactory quality. If it is not of satisfactory quality this is a breach of contract. A motorcycle is of satisfactory quality if it is of a standard that a reasonable person would expect taking into account all relevant circumstances such as (amongst other things) the age and mileage of the motorcycle.

Mrs G and Santander disagree about whether the motorcycle had a fault at the point of supply. In order to reach a decision I need to look at the available evidence and determine on the balance of probabilities whether the motorcycle was of satisfactory quality at the point of supply.

Mrs G reported the issues she was experiencing to Santander in January 2018. At the time, she had been riding the motorcycle for approximately 6 months and had covered approximately 3,000 miles.

I've looked at the statements from the repairing garage and the importer of the motorcycle. These suggest that there were a number of different faults with the motorcycle, all of which had been caused by a lack of maintenance, water ingress and/or road debris. Both statements say that the motorcycle hadn't been serviced in accordance with the manufacturers recommended service intervals and the importer said that this had voided the warranty cover.

Mrs G didn't agree with the opinion of the repairing garage or the importer so an expert engineers report was obtained. Following the inspection the engineer issued a report which said there was evidence of water contamination to several of the multi plug connections and that the fairings were dirty and in a neglected state. The engineer also said there was evidence that the motorcycle had never been serviced and that it was in poor condition due to lack of maintenance. In relation to the split wiring, the engineer said this was not caused by a lack of maintenance and was the manufacturer's responsibility.

Having considered the expert engineers report as well as all of the other available evidence, I'm not persuaded that the faults were present or developing at the point of supply. The exception to this is the split wiring, which seems more likely to be a point of supply fault. The wiring loom has now been replaced by the manufacturer at no cost to Mrs G which is what I would expect to happen in circumstances like these.

I appreciate that Mrs G is frustrated by the problems she's experienced with the motorcycle but don't think there's sufficient evidence to show that the motorcycle was not of satisfactory quality at the point of supply. It seems more likely, based on the available evidence, that the faults were caused by a lack of maintenance and a failure to service the motorcycle.

I've thought about the other points which Mrs G has made. Although Mrs G has provided detailed information about her use of the motorcycle, the number of times it's broken down and how she feels let down by the dealership, I've focussed on the points which were relevant to deciding the complaint. So whilst I appreciate that Mrs G says that all of the faults with the motorcycle were electrical and not due to poor maintenance, this isn't a view which is supported by the expert evidence.

For the reasons given, I won't be asking Santander Consumer (UK) Plc to cancel the credit agreement or do anything further.

my final decision

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 13 October 2018.

Emma Davy
ombudsman