

complaint

Mr F complains about a motorbike he bought with finance provided by Moneybarn No. 1 Limited.

background

In August 2017 Mr F bought a used motorbike under a conditional sale agreement financed by Moneybarn. It was three years old and had been driven 8,657 miles. Four days later it passed its MOT test. In September he reported a fault, which was repaired at the time. But in May 2018 he reported a number of other faults, including that the timing chain and a sprocket were so worn that they'd had to be replaced (at a mileage of about 11,000 miles), and the exhaust valve had seized. Mr F complained that the bike had been misrepresented to him, and he asked to return it with nothing more to pay.

It is not in dispute that the faults existed, but Moneybarn did not accept that the faults had been present or developing when the bike was sold. Mr F brought this complaint to our Service, and Moneybarn arranged for an independent inspection to be carried out by a third party. This was on the basis that it would pay for the report if there had been a fault at the point of sale, but Mr F would pay if there had not. By this time the bike had been repaired, so the report had to be based on documentary evidence. The report concluded that the faults had not been present at the point of sale.

Nevertheless, our investigator upheld this complaint in part. She agreed that there was no direct evidence that any of the faults had been present at the point of sale. But she inferred that there must have been some fault with the timing chain for it to have required replacing after less than 12,000 miles. She pointed out that one of the statutory implied terms of a commercial contract for the sale of goods is about the durability of the goods, and she thought that this term had been breached. She said that a timing chain should last between 40,000 and 100,000 miles. So she recommended that Moneybarn refund Mr F for the cost of repairing the timing chain, and also the sprocket and exhaust valve.

Mr F accepted that opinion, but Moneybarn did not. It argued that the report was reliable evidence, and that when the bike was voluntarily surrendered the mileage was over 12,500 miles, so Mr F had driven nearly 4,000 miles while he'd had it. So this complaint was referred to me for an ombudsman's decision.

I wrote a provisional decision which read as follows.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Mr F has said that he wouldn't have paid £7,295 for the bike if he had known about its age and mileage. But these facts were prominently displayed in the conditional sale agreement, so I think he knew or at least ought to have known about them at the time. So I do not uphold his complaint about the price of the bike.

As I've said already, the bike passed its MOT only four days after Mr F bought it. There were no advisories. This is strong evidence that there were no faults present or developing at the time, which suggests that the faults which have appeared since are merely the result of wear

and tear. I also take into account that the Consumer Rights Act 2015 states that the consumer bears the burden of proving that faults which become apparent more than six months after the sale were present or developing at the time.

I have read the independent report. Mr F has questioned the independence and integrity of the firm which produced it, but it is a reputable firm and I have seen many reports from it before. I consider it to be a generally reliable source of information. The individual who wrote this report has decades of experience in the motor industry. On the whole – subject to one exception which I will come to in a moment – I accept his evidence.

For all of these reasons, I agree with our investigator's conclusions about the faults with the components other than the timing chain, sprocket and exhaust valve. There is no evidence at all that these components were faulty when Mr F bought the bike, and plenty of evidence to support the opposite view. Moneybarn is only liable for faults which were present when he bought the bike. So I do not uphold this complaint insofar as it relates to those parts.

I take a different view about the timing chain. According to the independent report, the bike was taken to a garage in late May of 2018, when the mileage was 11,236 miles, and it was found that the timing chain was so worn that it had to be replaced. The author of the report concluded that "the wear to the timing chain and sprocket would not be considered to be unexpected for a motorcycle of this age with the mileage it has covered." He went on to say that Mr F had ridden the bike about 2,575 miles in the nine months since he'd bought it. This is less than 300 miles a month, which I do not consider to be very much.

Various websites say that a timing chain ought to last between 40,000 and 100,000 miles. Some say 60,000 to 100,000. A mileage of about 11,000 miles falls very far short of that, and so I infer that this was not merely fair wear and tear but the result of some sort of fault. There is no direct evidence of precisely what that fault was, but I think it is a fair and reasonable inference to draw. In any case, I don't need to identify what caused the timing chain to wear down so quickly, because it is enough to say that the chain was not durable – it cannot have been durable if it lasted for only about a quarter of its minimum expected lifespan. Section 9 of the Consumer Rights Act says that durability is an aspect of the quality of goods, and that a contract to supply goods includes an implied term that the quality of the goods is satisfactory. I think that term was breached in this instance, in relation to the timing chain, and so I uphold this aspect of this complaint. To that extent, and for that reason, I reject the independent report's conclusion about the timing chain – and also about the sprocket, because the report mentions the timing chain and the sprocket together each time it refers to them. The cost of that repair should be refunded, with interest. (I've seen two relevant invoices totalling £699.10.)

However, I do not reach the same conclusion about the exhaust valve. I can see no basis for doing so. On balance, I think that part was of satisfactory condition when the bike was sold.

Although the report did not find that there were faults at the point of sale, I do not agree, and so for that reason I think it would be fair to require Moneybarn to pay for the report, instead of Mr F, notwithstanding what was agreed between the parties to the contrary.

my provisional decision

I am currently minded to uphold this complaint in part. Subject to any further representations I receive from the parties ... I intend to order Moneybarn No. 1 Limited to:

- Pay Mr F £699.10 for the cost of replacing the timing chain and sprocket,
- Pay Mr F simple interest on that sum at eight per cent a year from 1 June 2018 to the date of settlement,
- Pay for the cost of the independent report, instead of requiring Mr F to pay for it.

responses to my provisional decision

Mr F accepted my provisional decision. Moneybarn did not. It thought that 40,000 to 100,000 miles for the duration of a timing chain seemed excessive for a motorbike of the type Mr F had. It asked which websites I had referred to when I'd obtained this figure.

I told Moneybarn I had referred to the following websites:

<https://www.yourmechanic.com/article/how-long-does-a-timing-chain-last>

<https://www.mklmotors.com/timing-chain-replacement/>

<https://oards.com/pros-cons-timing-chain-vs-timing-belt/>

Moneybarn replied to say that these websites seemed to refer to timing chains for cars, not for motorbikes. Moneybarn also said it had referred to a specialist in the make of motorbike Mr F had, who had told them that this particular motorbike had a timing *belt*, not a timing chain, and that the recommended mileage for changing the belt was 15,500 miles (or 23,000 kilometres). Moneybarn acknowledged that Mr F had ridden his motorbike for a shorter distance than this, but suggested that the belt would have lasted longer if it had been serviced every 6,000 miles (as recommended) and been well maintained.

my findings

I asked Moneybarn if there was evidence that Mr F's bike had a belt rather than a chain. Unfortunately, by then the bike had already been sold and so no evidence was available. Since the report uses the word chain twice, and does not use the word belt at all, I think the weight of the evidence supports the conclusion that this bike had a timing chain.

I have looked again at the websites I referred to when I wrote my provisional decision. It is not absolutely clear that they are only about cars and not bikes, but I have looked beyond the articles and looked at each website as a whole. Having done so, I can see why Moneybarn thinks the websites are really only about cars, and on the balance of probabilities I agree with them that this is probably right. So I searched again for online articles about timing chains for motorbikes. I found the following:

<https://packupandride.com/how-often-should-a-motorcycle-chain-be-replaced/>

This says:

"In general, a properly maintained motorcycle can will last 20,000 to 30,000 miles, sometimes more. But, some last as little as 5,000 to 10,000 miles. This difference is due to the type of chain, how and where you ride, and how well you maintain it."

This undermines my earlier doubts about the credibility of the independent report's conclusion that the damage to the chain was fair wear and tear. I now accept what the report says.

It follows that I am unable to uphold this complaint after all. I regret that this will come as a disappointment to Mr F.

my final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 3 February 2020. But if we do not hear from him then we will presume that he rejects it.

Richard Wood
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