

Complaint

Mr M complains that Blue Motor Finance Ltd refused to let him reject a faulty motorcycle

Background

In August 2018 Mr M bought a new motorcycle funded by a hire purchase agreement with Blue. It cost £20,000 and Mr M paid a deposit of £5,000. He collected it on 1 September and within a matter of hours he identified a problem with the throttle. This was repaired by the dealer after about a week. Mr M continued to have concerns about the motorbike and some five or so weeks later the manufacturer issued recall notice. It was taken to the dealer and remained there until around the end of March 2019.

During this period Mr M brought a complaint to this service where it was considered by one of our adjudicators who recommended it be upheld. Blue initially told her it had been agreeable to the motorbike being rejected, but it later said this was an error. It said the motorbike was subject to a manufacturer's recall which took the matter outside its responsibility.

Our adjudicator said the dealer had made a successful repair of the initial fault and so even though Mr M had raised his concerns within 30 days of purchase he had waived his right to reject. She thought the recall issue wasn't necessarily a fault which had been present at the point of sale, but she understood Mr M's concerns. She suggested Blue refund all payments made from October with interest and pay Mr M £150 compensation.

Blue said it had told Mr M his motorbike was ready in December and he hadn't collected it. As such it offered to repay two monthly payments. Mr M disputed this claim and Blue offered to provide a call recording supporting its claim, but it failed to submit one.

Our adjudicator responded to say that the delay appeared to have arisen due to a dispute between Blue and the dealer as to which party would accept liability. She noted Mr M had said he had made numerous calls to both parties to try and get the matter resolved. She said that she had told Mr M in December that she believed the bike to be ready, but she was still considering the complaint and the issue of rejection. As no agreement could be reached the matter has been referred to me.

My findings

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

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The finance agreement, that is the hire purchase agreement, in this case is a regulated consumer credit agreement. As such this service is able to consider complaints relating to it. Blue is also the supplier of the goods under this type of agreement, and responsible for a complaint about their quality.

The relevant law says that under a contract to supply goods, there is an implied term that *"the quality of the goods is satisfactory"*.

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

Under the relevant law 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 the goods.

It may be that I have the benefit of hindsight, but this matter seems relatively straightforward and I am both surprised and disappointed that Blue didn't resolve it sooner. Mr M was entitled to have years of trouble free use of the motorbike and not the three hours he enjoyed. He was also entitled to reject the motorbike, but as our adjudicator has explained he accepted a repair of the initial fault.

Regrettably this wasn't the end of Mr M problem's with the bike and it was returned to the dealer to effect repairs as a result of the manufacturer's recall. I see that the potential problem constituted a safety risk and it was sensible that it was returned to the dealer without delay. It seems the repair took longer than anticipated. Blue says the bike was ready before Mr M collected it and offered to supply a recording of a call to confirm this. Despite being given the opportunity to do so they failed to produce the recording.

It seems the delay, or part of it was due to a disagreement between Blue and the dealer, but that is of no concern to Mr M. I don't see why Mr M should pay for the bike for the period he was without it when it was being repaired. And I must stress this all these problems happened within a few months of his new bike being collected. A new bike should be fit for purpose and be durable. Mr M's bike wasn't and he was deprived of the use of it for a considerable time due to the actions or lack of action by Blue.

Therefore I have no hesitation in upholding this complaint.

My final decision

My final decision is that I uphold this complaint and I direct Blue Motor Finance Ltd to:

- refund all monthly payments from October 2018 until the date Mr M collected his motorbike. This should be calculated on a pro rata basis if necessary.
- pay interest at 8% simple on the refunds from the date payments or part payments were due until they are repaid.
- pay Mr M £150 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 January 2020.

Ivor Graham
Ombudsman