

The complaint

Mr R complains that Clydesdale Bank plc, trading as Virgin Money, won't refund to him the money that he paid for a used van engine.

What happened

Mr R was told by a garage in July 2021 that his van needed a new engine so he used his Virgin Money credit card in July 2021 to pay £1,854 for a used engine and turbo from a supplier. The garage says that when it fitted the engine it found water in the sump and that the engine had no compression due to water damage.

Mr R contacted Virgin Money and it made a chargeback claim to the supplier for the payment that Mr R had made to it. The supplier challenged the chargeback so Virgin Money declined Mr R's claim and it says that it determined that there was no claim under section 75 of the Consumer Credit Act 1974. Mr R wasn't satisfied with its response so complained to this service.

Our investigator recommended that his complaint should be upheld. She was satisfied that the engine wasn't of satisfactory quality and fit for purpose which was a breach of contract. She recommended that Virgin Money should refund the cost of the engine to Mr R's account, backdated to its decision in December 2021 to decline his claim, and reconstruct his credit card to reflect that refund.

Virgin Money hasn't responded to our investigator's recommendation so I've been asked to issue a decision on Mr R's complaint.

What I've decided – and why

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

Having done so, I agree with the outcome recommended by our investigator for these reasons:

- Virgin Money made a chargeback claim to the supplier for the payment that Mr R had made to it for the engine – but the claim was challenged by the supplier and Virgin Money declined his claim in December 2021;
- it says that it determined that there was no claim under section 75 but I've seen no evidence to show that it properly considered his claim under section 75 or the reasons for its determination;
- in certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier – and I consider that Virgin Money should have properly considered Mr R's claim under section 75;
- to be able to uphold Mr R's complaint about Virgin Money, I must be satisfied that there's been a breach of contract or misrepresentation by the supplier of the engine

and that Virgin Money's response to his claim under section 75 wasn't fair or reasonable – but I'm not determining the outcome of Mr R's claim under section 75 as only a court would be able to do that;

- a garage told Mr R in July 2021 that his van needed a new engine so he bought a used engine and turbo and the garage says that when it fitted the engine it found water in the sump and that the engine had no compression due to water damage;
- the garage says that the supplier contacted it and said that the water damage must have been caused by the garage washing the engine but I've seen no other evidence from the supplier or Virgin Money to show that the engine was of satisfactory quality when it was supplied to Mr R or that the issues with it were caused by the garage;
- I consider it to be more likely than not that the engine wasn't of satisfactory quality when it was supplied to Mr R which would be a breach of contract by the supplier for which Virgin Money would be liable under section 75; and
- I consider that Virgin Money's response to Mr R's claim wasn't fair or reasonable in these circumstances and I find that it would be fair and reasonable for it to take the actions described below.

Putting things right

I find that it would be fair and reasonable for Virgin Money to rework Mr R's credit card as if the payment of £1,854 had been refunded to his credit card account in December 2021 (when Virgin Money declined his claim) and to make the refund and payments described below.

My final decision

My decision is that I uphold Mr R's complaint and I order Clydesdale Bank plc, trading as Virgin Money, to:

1. Rework Mr R's credit card account as if the payment of £1,854 had been refunded in December 2021, and - if that puts the account into credit - to pay interest at an annual rate of 8% simple on the credit balance for the periods that the account was in credit - it should also refund the credit balance to Mr R.
2. If Mr N has repaid the £1,854 (or any part of it) to Virgin Money but doesn't have a credit balance, to pay interest on the amount that he has repaid at an annual rate of 8% simple from the date of payment until the date of settlement.

HM Revenue & Customs requires Virgin Money to deduct tax from the interest payments referred to above. Virgin Money must give Mr R 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 R to accept or reject my decision before 13 December 2022.

Jarrold Hastings
Ombudsman