

## The complaint

Mr C complains Clydesdale Bank Plc trading as Virgin Money (“Virgin”) provided no assistance when he approached it for help in connection with problems he’d had with the purchase of a motorcycle.

## What happened

I issued a provisional decision on this case on 18 August 2023, in which I set out the background to the complaint, so I will cover this only in summary in this final decision:

- Mr C saw a motorcycle advertised on a well-known e-commerce website (“E”). He contacted the seller and arranged to buy the vehicle for £3,195. The seller couldn’t accept credit cards so he suggested Mr C use a digital wallet operator (“P”) to pay him. Mr C did this via P’s “Friends and Family” payment option. The payment was funded with Mr C’s Virgin credit card, which he had set up as a funding source with P.
- Mr C reported having a lot of problems with the motorcycle. He was concerned about how it had been maintained and he contacted the seller with several concerns. These included the oil being black, the coolant being empty, and a fluid leak. Initially the seller offered to take the vehicle back and give Mr C a refund, but eventually he stopped communicating with Mr C. Other problems have been reported with the motorcycle by Mr C, including a seized engine and cracked piston.
- Mr C contacted E but he says they wouldn’t help him because of the way in which he’d purchased the motorcycle. He then contacted Virgin to make a claim under section 75 of the Consumer Credit Act 1974 (“CCA”). Virgin didn’t look into this however, and instead explored whether it could reclaim the money Mr C had paid via the process known as a chargeback.
- Virgin decided it couldn’t help Mr C in this way, because he’d used P’s “Friends and Family” payment option. Mr C complained to Virgin but it would not change its decision, only offering £100 compensation as a gesture of goodwill. Mr C says this led him to financial ruin and he became insolvent under a Debt Relief Order (“DRO”).

Mr C then brought his complaint to the Financial Ombudsman Service. One of our investigators looked into it and she didn’t think it could be upheld. Mr C asked to appeal and the case was passed to me to decide.

In my provisional decision I said there were generally two main ways in which a card issuer (such as Virgin) could help a customer if something went wrong with a purchase they’d made using their credit card. These were attempting a chargeback, or honouring a claim under section 75 of the CCA. I went through each method in turn. On the matter of the chargeback I noted Virgin were required to follow the rules of the card scheme (Mastercard) when deciding whether or not to attempt one. I then said:

*“Ordinarily a chargeback can be attempted where someone has purchased goods with their*

*card and they are defective or not as described. However, the payment Mr C made with his card was made via a mechanism for sending money to individuals (i.e. the “Friends and Family” option), and my reading of the rules is that this would not be treated as a purchase of goods and would be ineligible for the type of chargeback I’ve described above. Virgin was therefore not wrong to say it couldn’t help Mr C via the chargeback process.”*

I then went on to consider the matter of the section 75 claim. Section 75, I observed, could allow Mr C to claim against Virgin in respect of a breach of contract or misrepresentation by the seller. I noted technical arguments had been advanced as to why section 75 protection didn’t apply to Mr C’s purchase, but that I was also of the view that there were other aspects of the purchase which meant a successful section 75 claim would be difficult to make:

*“When Mr C bought the motorcycle, the evidence suggests the person he bought it from may have been a private seller as opposed to a trader. This is important because when a person buys from someone who is not a trader, they do not benefit from the same level of consumer protection. In particular, the Consumer Rights Act 2015 (“CRA”) does not apply to such purchases, and it would be the Sale of Goods Act 1979 (“SGA”) which applies instead.*

*Under the SGA, there are no specific quality standards that goods are expected to meet if they are sold by a private seller. Goods could be faulty for example, and the seller would not necessarily be in breach of contract. However, if a sale is by description (which it was here) then the SGA says it’s an implied term of the contract that the goods will meet their description. If they do not, the seller will be in breach of contract.*

*Mr C has said the seller advertised the motorcycle as having been recently serviced and in excellent condition with no faults, but he has also noted that the description in the advert is no longer available. I’ve seen a copy of the advert and it does seem to be the case that the seller replaced whatever description he’d given with the word “SOLD” once a sale had been agreed. However, without the original description it would be difficult to conclude that the motorcycle was not as it had been described.*

*If the seller was a trader then the CRA would apply and it would have been an implied term of the contract that the motorcycle would need to have been “satisfactory quality” when it was sold to Mr C. Normally to show that something is not satisfactory quality there would need to be evidence that it was faulty and that the faults were either present or developing at the point it was sold, or that it was not sufficiently durable. Mr C has described several faults and said he sent all his evidence to Virgin. Our investigator requested and received this evidence from Virgin. Having reviewed it, I don’t think it is sufficient to show that the motorcycle had faults. It shows that Mr C complained about a low coolant level, the colour of the oil, a potential fluid leak, and the lack of a receipt for a service, but there are no photos or reports which might help to prove these things. And I note that some of the more serious issues Mr C mentioned to our investigator, such as a cracked piston and seized engine, are not referred to in the complaints to the seller.”*

Concluding, I said that whether or not section 75 applied to Mr C’s purchase, I was unable to say that the seller was in breach of contract. However, I was mindful that Mr C may have been able to provide further evidence regarding the faults, so I went on to consider the technical arguments which had been made in more detail.

I noted that one of the key conditions which needs to be met for section 75 to apply to a purchase, is that there needs to be what is called a debtor-creditor-supplier (“DCS”) agreement in place. I summarised what this meant as follows:

*“For there to be a DCS agreement in place for his purchase, Mr C’s payment for the purchase needs to have been made under pre-existing arrangements between the creditor*

*(Virgin) and the supplier (the motorcycle seller) or in contemplation of future arrangements between them. I will simply refer to these together as “arrangements”.*”

I outlined what arrangements, in their most typical sense, looked like:

*“The typical example of arrangements between a creditor and supplier is where the creditor has made an agreement with the supplier that the supplier can accept its credit cards. Under these arrangements the creditor agrees to pay the supplier on presentation of a credit card by the debtor, the supplier agrees to provide the goods or services to the debtor, and the debtor agrees to repay the credit provided by the creditor. Matters are often more complicated than this however, and various intermediaries can be involved between the creditor and the supplier.”*

I explored the question of intermediaries further, touching on some of the case law which, in my view, had meant “arrangements” could be defined rather loosely and could certainly be indirect between the creditor and the supplier. This, I reasoned, meant that payment via intermediaries such as P did not necessarily mean there was no DCS agreement in place.

However, there was a problem in this case, and that was the fact Mr C had used the “Friends and Family” payment method on P’s platform. On this I said the following:

*“As our investigator observed, P made it clear at the point of payment that the “Friends and Family” option for sending money was not intended for buying goods or services. Indeed, P’s “User Agreement” prohibited Mr C from paying for goods and services in this way.*

*While I think that in some circumstances arrangements should still be deemed to exist between the creditor and supplier when payment is made via an intermediary like P, I think it is difficult to conclude that this should extend to specific methods of payment which are not intended for buying goods or services and, as in this case, are prohibited for that purpose. It would not be logical to say that such a payment was made under relevant arrangements between the creditor and supplier, when it is not a normal way of paying for goods or services, and disallowed by the payment provider.*

*Mr C has argued he was unaware of the consequences of paying for the motorcycle in this way, and has referenced the impact of specific learning difficulties he has to support this.*

*One of the points made by the Court of Appeal is relevant to Mr C’s argument. The Court noted that consumers are often unaware of the mechanisms underlying the payments they make and that, broadly speaking, it wouldn’t be fair for them to be penalised for that. I do not think I can apply that reasoning to this case in a way which assists Mr C however. As I’ve said already, I think P’s payment screen (of which I’ve seen an example) made a clear distinction between payments to “Friends and Family” and for “Goods and Services”. I think Mr C would have been aware that he was selecting a payment method which was not intended for purchases.*

*It follows that I consider Mr C’s payment to the motorcycle seller was not made under a DCS agreement which would allow him to hold Virgin liable for breaches of contract or misrepresentations by the seller, under section 75 of the CCA. Therefore, Virgin did not act unfairly or unreasonably in declining to honour a claim from Mr C.”*

Having reached this conclusion, I was also bound to conclude that Virgin could not be found responsible for having caused Mr C’s financial difficulties. I did think, however, that there were aspects of Virgin’s customer service which could have been better. It had made some unnecessary requests of Mr C, such as asking him to contact the seller to arrange the return

of the motorcycle (in order to meet one of the criteria for a chargeback to be attempted). This had been unnecessary because a chargeback could not have succeeded in any event. I also thought Virgin could have explained better to Mr C why it was not taking forward a section 75 claim. I thought Virgin should pay Mr C the £100 compensation it had already offered.

I asked both parties to the case to comment on my provisional findings. Virgin said it had nothing to add. Mr C made a number of points which I could summarise as follows:

- Virgin hadn't been of any assistance at all when he had approached it for help as a last resort.
- Virgin had been unsympathetic to his financial difficulties and had been unwilling to help with repayment plans or restructuring of his debt. Virgin had been completely indifferent to his problems. This is what had led him into insolvency.
- The seller had in fact been a trader, and he sold motorcycles for a living using E's classified ads section. And while the purchase had been made off of E's platform, this was normal for classified listings where the buyer is expected to contact the seller and conclude the purchase off the platform.
- He did not see how P's User Agreement had anything to do with Virgin's potential liability to him under section 75 of the CCA. He accepted that P's *own* protection for buyers doesn't apply to payments made via the "Friends and Family" option, but argued that did not extend to not having protection under section 75. It was in most respects exactly the same as paying the seller via the "Goods and Services" option.
- He had never gathered more evidence because the seller stopped responding to him and Virgin had only asked for specific things, which he had provided. He'd stopped collecting evidence once Virgin had made it clear they wouldn't be helping.

The case has now been returned to me to consider again.

### **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.

In his response to my provisional decision, Mr C has developed his points relating to his financial difficulties in more detail. He has referred to not being offered a repayment plan, for example.

Mr C had previously referred to being met with a lack of sympathy when he told Virgin he could go bankrupt, and Virgin failing to "offer any solutions", but as he has now gone into more detail about this I've looked into this point further.

I asked Virgin to provide a recording of the call Mr C was referring to, which I have now listened to. In the call Mr C refers to potentially having to go bankrupt if his claim is not honoured. He says this is because he can't afford to absorb the loss. The member of staff he is speaking to says they are sorry to hear that, but that he doesn't have a right to a refund and they suggest that Mr C contacts Citizens Advice to see if there's any other way of claiming the money back from the motorcycle seller. Mr C disagrees with this and suggests that Virgin try to claim the money back from the motorcycle seller in order to force him to get in contact. Virgin's member of staff says they can't do this, after which Mr C says he's going to talk to a debt charity and disconnects the phone call.

I don't think Mr C made it clear on this phone call that he was looking for assistance with difficulties making his credit card payments. He didn't ask for a repayment plan or restructuring of his debt. He was very focused on the matter of getting a refund for the motorcycle and his suggestions for how Virgin could help him were centred on that point. Mr C was within his credit limit and not, to my knowledge, behind on his repayments. He ended the phone call when Virgin continued to refuse to do anything about the dispute over the motorcycle, and there was no further discussion of his finances. Overall, I'm not convinced that Virgin behaved unfairly or unreasonably with respect to Mr C's financial difficulties.

Even if I did think that Virgin ought to have offered some sort of forbearance in relation to the debt on the account, I note Mr C did go to a debt advice charity shortly after his conversation with Virgin and was made insolvent under a DRO. To be eligible for a DRO a person's financial situation needs to be very poor, so I think I'd find it difficult to conclude that Virgin's failure to offer forbearance caused Mr C's insolvency.

Moving on to the other parts of Mr C's complaint, I accept Mr C's point that the motorcycle seller was a trader rather than a private seller. However, he would still need to show that the vehicle was not satisfactory quality as required by the Consumer Rights Act 2015. I don't think Mr C has evidenced that the motorcycle had faults or was not satisfactory quality, and while I appreciate why he didn't gather further evidence at the time, it wouldn't be reasonable to expect Virgin to honour a section 75 claim from him without this evidence.

Turning to the question of the DCS agreement and the significance of the "Friends and Family" payment method to this, there's not a lot I can add to what I said in my provisional decision as summarised and quoted above.

I appreciate the arguments are technical ones, and I understand Mr C's point that P's own protection won't apply, but for there to be a DCS agreement (and therefore for section 75 to apply to a purchase) there need to be arrangements between the credit card company and the supplier of the motorcycle. I accept that arrangements do not have to be direct and they can exist via intermediaries like P. But I do not think it makes sense to say that there can be arrangements in place where the method of payment is one which is not intended and is indeed specifically prohibited, for the purchase of goods. This was clearly the case with the payment Mr C made via P's "Friends and Family" method.

Because there are not arrangements of the required kind between Virgin and the motorcycle supplier, the payment to the supplier and purchase of the motorcycle was not made under a DCS agreement and section 75 protection does not apply to the purchase. It's unfortunate for Mr C but it follows that my conclusion is that Virgin was right not to honour a section 75 claim from him.

Mr C hasn't made any specific submissions following my provisional decision, on the question of whether Virgin should have attempted a chargeback. On this point I'll say no more than that I remain of the view that Mr C's purchase wasn't eligible for a chargeback, for the same reasons I outlined in the quoted extract from my provisional decision.

This leaves the question of Virgin's customer service. I said in my provisional decision that I was minded Virgin should pay the £100 compensation it had already offered. I've not seen any reason to change that and so my final decision will be that this is what Virgin must pay Mr C.

### **My final decision**

For the reasons explained above, including those outlined in the summary and extracts from

my provisional decision, Clydesdale Bank plc trading as Virgin Money must now pay Mr C the £100 compensation it has already offered in respect of its minor customer service failings. I do not uphold the remainder of Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 3 November 2023.

Will Culley  
**Ombudsman**