

The complaint

Mr S complains Clydesdale Bank Plc trading as Virgin Money (Virgin Money) have unfairly considered his disputes under section 75 of the Consumer Credit Act 1974 and the chargeback scheme.

What happened

The details of this case are well known to both parties so I won't repeat them here. Instead, I will focus on the reasons for my decision.

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've decided to partially uphold Mr S' complaint. I'll explain why.

Mr S has made a number of requests for refunds for online transactions that he describes as 'risky'. According to Virgin Money around 23 disputes were raised during 2022. Like the investigator and Virgin Money, I find the number of them to be high and somewhat unusual especially given the relatively short period of time. Given the number of them, there appears to be a level of confusion about what has been resolved and what remains outstanding. I wish to make it clear, it's not our service's role to go through each one individually to work out what is going on.

Based on the evidence presented to me which includes credit card statements, dispute forms, Virgin Money's records, etc, there have been a mixture of section 75 claims and chargeback disputes. I can see a large number of them have been successfully refunded to Mr S. In line with what I would expect, the relevant refunds (credits) can be seen on Mr S' credit card statements.

I've taken a broad view of the complaint and the disputes concerned. Having reviewed the evidence, the main one that appears to be outstanding relates to a purchase of a phone in July 2022 costing £1,070. Mr S said he never received the phone so he wants his money back. For the purposes of this decision, I will be focusing on that dispute only, I won't be commenting on any others.

Mr S had two ways that Virgin Money could assist him. They could request a refund from the supplier through the chargeback scheme. This is a way in which payment settlement disputes are resolved between the cardholder and supplier. They are dealt with under the relevant card scheme rules. However there is no obligation for a card issuer to raise a chargeback when a consumer asks for one. But I would consider it good practice for one to be attempted where the right exists and there is a reasonable chance of success.

The second way is a dispute raised under section 75 of the Consumer Credit Act 1974. In certain circumstances, section 75 gives a consumer a right to claim against a supplier of goods or the provider of credit (Virgin Money) if there's been a breach of contract or a

misrepresentation. But it's necessary for a debtor-creditor-supplier agreement to be present to be able to make a section 75 claim. Such disputes are only for purchases above £100 but less than £30,000.

In this case, Mr S said he purchased the phone from a website (the supplier) who I refer to as Q. In August 2022, he complained he never received the phone and asked for the money to be refunded. Virgin Money raised a chargeback dispute. They credited the account with the transaction amount but made it clear to Mr S that Q may provide evidence to contest this which may mean the amount is re-debited to the account. Virgin Money contacted Q to find out more information and to get their version of events. In response, Q said the goods were successfully delivered to Mr S' address in August 2022. To support their position, Q confirmed the order number, provided photos of the package with Mr S' address, the parcel's tracking information which said the parcel had been signed for and a delivery certificate by the parcel courier. Mr S also provided some evidence about the order to Virgin Money.

In light of Q's evidence, Virgin Money contacted Mr S by phone to discuss the dispute further in December 2022. I've listened to the call. The advisor outlined the current position – Q had provided evidence of delivery and the order number was different than the one provided by Mr S. The advisor told Mr S if he had any further information or evidence he should do so and somebody would get back in contact with him.

This conversation was followed up in writing via a letter dated 5 December 2022. The letter made it clear what information Virgin Money needed. It reiterated the order number provided by Mr S in August 2022 was different to the one provided by Q. It also asked Mr S to review Q's delivery inspection report. I find Virgin Money's request for information to be fair as the evidence was conflicting. They gave Mr S' another opportunity to provide evidence to support his allegation. However I can't see that he responded to that letter. As a result, a couple of weeks later Virgin Money sent a further letter to say as they hadn't received a response, they wouldn't be taking the claim further because there was insufficient evidence there had been a breach of contract. They confirmed the refund previously applied would be removed and the transaction amount will be a part of the balance and subject to interest again. At the end of the letter, it again invited Mr S to provide any further evidence for this dispute. There is no evidence Mr S was told he could appeal this decision or that it was still being looked into by Virgin Money. Moreover, there is no evidence Mr S provided any further evidence for Virgin Money to consider.

Based on the evidence Virgin Money had at the time, I'm satisfied they fairly considered the dispute. I say this because there was strong evidence the phone had been delivered, there wasn't enough evidence to reasonably say it hadn't been. It's clear Virgin Money was more persuaded by the evidence provided by Q than that provided by Mr S. I agree there wasn't enough evidence to say there had been a breach of contract for section 75 purposes. Equally there wasn't a reasonable chance of the chargeback being successful so I can understand why Virgin Money decided not to pursue that avenue further.

Mr S has provided our service with a report following a complaint he made to the police about how they investigated his concerns about Virgin Money's handling of his refund disputes. That is dated September 2023. The other evidence he's provided is an email from the courier company dated October 2023. Mr S maintains this evidence supports the phone wasn't delivered. Given both pieces of evidence are dated several months after Virgin Money considered the refund dispute, it's fair to say they didn't have the opportunity to take this into account during their investigation. I haven't seen anything to say this evidence was provided to Virgin Money.

However even if it had been sent to Virgin Money I don't believe it would've made a material difference to the overall outcome. I say this because the police report makes it clear the

suitable body to investigate Mr S' concerns is our service. The courier's email confirms an order hadn't been delivered. However I note it's for a different order number and doesn't relate to this transaction as outlined by Q. Also it appears to make reference to a different credit card provider, not Virgin Money. On balance, I find it's more likely than not the courier's email is referring to a completely different order and not the one subject to this dispute. The order number quoted in the email is the same one Mr S previously provided to Virgin Money and they said it conflicted with the information from Q and Mr S needed to provide further evidence. This is why I don't believe the courier's email would materially change Virgin Money's stance about this dispute.

Taking everything into account, I'm satisfied Virgin Money fairly and reasonably considered Mr S' refund request for the phone. I agree there was insufficient evidence of a breach of contract (section 75) and there wasn't a reasonable prospect of success for a chargeback. On balance, it appears the phone was delivered to Mr S. So in line with the terms of the agreement, Virgin Money confirmed the transaction would be re-added to Mr S' credit card balance and was subject to interest along with all other purchase transactions. From Virgin Money's perspective, they've dealt with this dispute and told Mr S of their outcome, they are not looking into it any further. There isn't an appeal that they are looking into for this particular dispute.

I'm aware Mr S has expressed concerns about the interest charged on transactions where he's raised a dispute. Virgin Money has told our service that when a dispute is raised, no interest is applied to that transaction until a decision is reached. Meaning if the section 75 or chargeback dispute is successful, interest won't be applied to that transaction. However if the dispute isn't successful, interest will be charged. I accept what Virgin Money has said in good faith and based on the statements I've seen, there's nothing to say that hasn't happened in this case. I hope that clarifies matters for Mr S.

Other

Having read Virgin Money's final response letter, I don't find it sufficiently addressed Mr S' complaint points about the disputes. It only comments on the poor level of service provided and offered £25 compensation (credited to Mr S' account). This was Virgin Money's opportunity to fully investigate his concerns and provide their findings but they didn't do so sufficiently. Overall, I believe Virgin Money's level of service could've been better and their response to this could should've been more clear. I agree with the investigator that they should pay a further £100 compensation to Mr S. This is in addition to the £25 already credited to the account.

As already mentioned, given the number of disputes raised I believe there has been a level of confusion caused between Mr S and Virgin Money. Namely what disputes have been resolved and what remains outstanding. If they haven't done so already, I strongly encourage Virgin Money to provide a clear update to Mr S on each dispute (whether successful or not), to avoid any further confusion. I believe this would be beneficial especially in light of Mr S' vulnerabilities.

I appreciate Mr S may be disappointed by my outcome but I hope it provides clarity and understanding about this dispute.

My final decision

For the reasons set out above, I've decided partially uphold Mr S' complaint.

To put things right, Clydesdale Bank Plc trading as Virgin Money (Virgin Money) should pay £100 compensation to Mr S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 26 March 2024.

Simona Reese
Ombudsman