

## **The complaint**

Mr P complains that Clydesdale Bank Plc trading as Virgin Money (“Virgin Money”) has failed to help him reclaim money for a bike he purchased.

## **What happened**

On 1 April 2023, Mr P purchased an electric bike from a shop. He paid £2,699 using his Virgin Money credit card. Mr P says that he bought the bike on the understanding that it had a 100-mile range on one charge.

Mr P took the bike out for a five-mile ride and then put it on charge so it would be fully charged for a cycling trip he was going on the next day. He used the bike on the trip however he soon noticed that the bike’s range wasn’t anywhere near 100 miles. Mr P says the bike’s power ended after around 65 miles. So, he decided to return it to the shop.

Mr P says the shop agreed to inspect the bike and that he’d get a refund minus the cost of a few miles and scratches. However, this didn’t happen and so Mr P asked Virgin Money for help in getting his money back.

Virgin Money first considered whether they could raise a chargeback. They asked Mr P for further information but subsequently told him that the chargeback was out of time. Mr P complained to Virgin Money. They said in response that they didn’t have enough evidence to prove there had been a breach of in the terms and conditions with the shop and that they were out of time to submit the chargeback. And Virgin Money said they couldn’t progress the dispute under Section 75 of the Consumer Credit Act 1974 (“section 75”) as there was no breach of contract or misrepresentation by the shop.

Mr P wasn’t happy with Virgin Money’s response and so he referred his complaint to us. Our investigator didn’t recommend that the complaint should be upheld. He said, in summary, that he hadn’t seen evidence that the shop promised to refund Mr P and so felt that a chargeback wouldn’t have been successful even if it had been raised. Our investigator subsequently said that a section 75 claim wouldn’t have been successful.

Mr P didn’t agree and asked for an ombudsman’s 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.

There are typically two avenues here that Virgin Money as the provider of credit could have considered.

### *Chargeback*

In certain circumstances, when a cardholder has a dispute with a merchant, as Mr P does here, Virgin Money (as the card issuer) can attempt a chargeback. The process involves the card issuer disputing payments made on the card through a dispute resolution scheme operated by the companies which run the card networks, which in this case is Mastercard.

I would normally expect a credit card issuer to attempt a chargeback if there was a reasonable prospect of this achieving a successful outcome. But the chargeback process doesn't give the consumer legal rights and it isn't guaranteed to result in a refund.

Here, Virgin Money didn't attempt a chargeback. They told Mr P in their response to his complaint that:

- They had 120 days from the date Mr P bought the bike to submit a chargeback.
- The purchase date was 1 April 2023.
- Mr P submitted his dispute to them on 26 May 2023, but they required additional information from him.
- They received the additional information from Mr P on 24 July 2023, but didn't have enough evidence to prove there had been a breach in the shop's terms and conditions.
- They were by then out of time to submit the chargeback.

It's not clear what additional information was provided to Virgin Money by Mr P or why they felt this wasn't sufficient to raise a chargeback. So, I'm not necessarily convinced that they had reasonable grounds to decide not to raise this.

However, I think it likely that the chargeback wouldn't have been successful if Virgin Money had raised this. I say this because the shop told Mr P after he had returned the bike that he wasn't entitled to a refund and wouldn't be receiving one (albeit not initially). I note also our investigator called the shop and they said the same to him.

I've not seen sufficient evidence that the shop promised Mr P that they would refund him or that their terms and conditions around refunds entitled him to one. So, even if Virgin Money had raised a chargeback on the basis that a promised refund hadn't materialised, the shop (or their bank) would in my view have defended the chargeback. And, bearing in mind that Mr P didn't have much in the way of evidence that such a refund was promised, I don't think Virgin Money would have taken the matter further.

### *Section 75*

In deciding what I think is fair and reasonable I need to have regard to, amongst other things, any relevant law. In this case, the relevant law is section 75 which says that, in certain circumstances, if Mr P paid for goods and services, in part or whole, on his Virgin Money credit card, and there was a breach of contract or misrepresentation by the supplier, Virgin Money can be held responsible.

Mr P initially raised a dispute because he says the bike didn't deliver the expected range of 100 miles for each charge. So, he's effectively saying that the shop either misrepresented that the bike had such a range, or that there was a breach of contract because the bike failed to perform as expected.

The problem here though is that I don't have much in the way of evidence that the bike failed to achieve the expected range other than the verbal evidence Mr P has submitted. I haven't for example seen that the bike was inspected and either found to be faulty or not working as expected for some other reason. I don't doubt Mr P's version of events. But for me to say there was a breach of contract or a misrepresentation I would need more evidence to support this. And, unfortunately for Mr P. I don't have sufficient evidence that would make me think that Virgin Money should do something to put things right. I also haven't seen sufficient evidence that the shop's terms and conditions were such that a refund was due in a situation like this, and that they breached their contract by not then doing so.

I do sympathise with Mr P as he has spent a large sum of money on a bike that he currently doesn't have. But I don't find that his complaint should succeed for the reasons I've set out above. I gather that the bike is still available for Mr P to collect at the bike manufacturer's head office. I shall leave it for Mr P to decide whether he wants to do this. If he finds that he is now unable to do so, then he may wish to raise a dispute with Virgin Money on that basis. But I make no comment on whether Mr P has any grounds to be successful on that point.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 1 August 2024.

Daniel Picken  
**Ombudsman**