

## The complaint

Mr H complained about the way Clydesdale Bank Plc trading as Virgin Money (Virgin Money) dealt with a claim for a refund for goods he bought using a credit card but says he didn't receive.

## What happened

Mr H purchased a gold bar for around £1,500 using his Virgin Money credit card from an online supplier I'll call B on 29 November 2022. In his correspondence with B, Mr H has stated when the package was delivered by Royal Mail on 3 December 2022, there was no gold bar contained in it. He told the Financial Ombudsman his mother accepted the delivery, and he didn't open the package until later on the day. He said the outer envelope was sealed however the white envelope inside was tampered with and only had a brochure and invoice and was taped. He contacted B later on in the day after the package was delivered and said the item was missing, it said it would investigate.

Mr H raised a dispute with Virgin Money in the middle of December 2022. Virgin Money raised a chargeback and applied a temporary credit to Mr H's account for the amount paid. The chargeback was defended by B twice. It said it had correctly packaged the gold bar and it was delivered to Mr H. It referred to its terms and conditions and said at the point of delivery, Mr H should have checked the package and if there were any issues instruct the courier to return it to B. It said that any issues once he accepted the delivery was his responsibility.

Virgin Money declined to progress the chargeback any further after the second defence and informed Mr H in May 2023. Mr H appealed this, and Virgin Money said it would review the information and told him in February 2024 that its decision remained the same. Mr H contacted Virgin Money in April 2024 as he said he didn't receive this communication and raised a complaint about the length of time the claim was ongoing.

Virgin Money responded to Mr H's complaint and explained that it didn't have any further evidence to dispute the chargeback, so it declined to take it any further and had re-debited Mr H's account with the temporary credit it applied. It agreed Mr H was provided poor service and there were delays in progressing his dispute. It paid him £60 to say sorry.

Mr H was unhappy Virgin Money wouldn't refund him the money he paid for the gold bar and referred his complaint to the Financial Ombudsman.

Our investigator reviewed the complaint but didn't uphold it. He thought Virgin Money did what was expected in respect of the chargeback process. He didn't think there was enough evidence to say that a breach of contract happened so didn't think Virgin Money could be held responsible under Section 75 of the Consumer Credit Act 1974 (Section 75). He agreed with the compensation amount Virgin Money paid for the delays caused in dealing with Mr H's claim.

Mr H disagreed with the investigator's assessment and asked for an ombudsman's review.

## **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.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

I understand Mr H wants a refund as he says he didn't receive the gold bar, but I need to consider the actions of Virgin Money as the financial services provider in this complaint. I'm not considering a complaint about B. I've considered if Virgin Money has acted fairly and reasonably in the way it handled Mr H's request for getting his money back.

## **Chargeback**

In certain circumstances a card issuer can raise a chargeback dispute under the relevant card scheme rules, in this case it's the Mastercard scheme. This is where the cardholder has a dispute with the merchant, but this is subject to strict rules and there is no guarantee that the card issuer will be able to recover the disputed amount. Whilst there is no obligation for the card issuer to raise a chargeback claim, I think it's good practice to do so, where there is prospect of success.

The most relevant chargeback condition in this case would be goods/services not received. Virgin Money raised a chargeback, and I think this was fair of it.

The chargeback was defended by B on the basis that it sent the package. It provided evidence including CCTV screenshots of the packaging of the gold bar and confirmation from the courier to show the package was delivered to the correct address and this was accepted. Virgin Money informed Mr H and asked for additional information and used this to progress the chargeback to the pre-arbitration stage. At this point B referred to the terms and conditions which state that the delivery shouldn't be accepted if the packaging is damaged or tampered with and should be returned to B.

Virgin Money then declined to progress the chargeback any further and I think this was reasonable. I say this because it appears there was no further evidence to provide and although I've noted Mr H's comments that it was only the envelope inside the sealed outer packaging that was tampered with, I think it's reasonable Virgin Money accepted there was a valid defence, and it's unlikely there would be any reasonable prospect of success based on the evidence presented.

## **Section 75**

Under Section 75, Virgin Money is jointly liable for any breaches of contract or misrepresentations made by the supplier of goods or services – which is B in this case. In order for there to be a valid claim under Section 75, there needed to be a debtor-creditor-supplier ('DCS') agreement in place and the transaction needs to be within certain financial limits. I'm satisfied the criteria has been met. The Consumer Rights Act 2015 (CRA) is also relevant, and I've taken this into consideration when deciding this case.

Mr H hasn't complained the goods were misrepresented. So, whilst Virgin Money hasn't explicitly said it considered a Section 75 claim, I've gone on to consider what its overall liability is under Section 75 and whether its response to the claim is fair.

I've thought about whether there is enough evidence to demonstrate if there is a breach of contract of express or implied terms. Here Mr H explains he didn't receive the gold bar within the package.

B provided photos it says showed that the gold bar was packaged and sealed correctly. However, I'm conscious the photos provided as part of its defence to the chargeback, which Virgin Money provided to this service aren't clear. They are in black and white, and I can't see any specific details these relate to Mr H's package. Also, I can't say exactly what happened to the package after it was sealed as part of B's packaging process, and before it was delivered to Mr H. Based on the evidence supplied, I'll never know for certain what happened because of the evidential challenges.

If there is an allegation that B didn't send the goods, or they were taken by Royal Mail – these are very serious. Like Virgin Money I'm unable to take sworn evidence from B or from the staff at Royal Mail so it's difficult for me to verify or establish exactly what happened during the journey between being sent by B and delivery to Mr H's address and then when he opened the package. I would expect Virgin Money would have the same issues as part of considering a claim under Section 75. It's not clear that its answer was unfair based on the evidence that was presented.

It's also unclear what happened to the package after Mr H's mother accepted it. Mr H says he put it in his room and went to visit a friend and only opened the package after he returned. Mr H didn't provide a clear timeline when our investigator contacted him for further information. So, it's difficult for me to understand what happened when Royal Mail delivered the package and when Mr H emailed B on the same day. He says he called it after he opened the package, but I can't see a record of this. Additionally, Mr H has provided a picture of the packaging for the item. It's unclear if this is the envelope from inside the sealed outer packaging. However again it's difficult to establish how this was opened and when.

I'd like to have been more certain that there was a clear breach of the express or implied terms of the contract. On balance, I don't think it was unfair of Virgin Money to have been unable to conclude the item wasn't in the package when B sent it or that it was taken during the delivery process. That's not to say something hasn't gone wrong, merely that I don't think it was unreasonable for Virgin Money not to uphold the claim given the limited persuasive evidence that was available.

To investigate this further it may be more appropriate for Mr H to pursue this through alternative avenues such as the courts.

Based on the evidence available, on balance, I don't think Virgin Money's ultimate answer was unfair.

I've also thought about if anything else has gone wrong.

I've considered that Virgin Money told Mr H around May 2023 that it declined the chargeback, and it would review the information after Mr H contacted it to appeal its decision. It reviewed the information and told Mr H in February 2024 it wouldn't be changing its position. I consider there was a delay here, although I don't think this has impacted the outcome of the overall claim. I think Virgin Money should have explained it was going to re-debit the temporary credit earlier, but I can't see that Mr H was caused a financial detriment by not doing this sooner. Virgin Money paid Mr H £60 for the customer service he received, and I think this broadly fair in the circumstances.

As part of his complaint to the Financial Ombudsman Mr H also explained he was unhappy with the default that's been applied by Virgin Money. Our investigator explained this is a

separate issue. If Mr H wants to complain about this, he will need to raise this with Virgin Money if he hasn't already done so. I've not considered this as part of my review.

### **My final decision**

For the reasons explained above, I do not uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 19 December 2024.

Amina Rashid  
**Ombudsman**