

## **The complaint**

Mrs R complains that Clydesdale Bank Plc, trading as Virgin Money, hasn't treated her fairly regarding a funeral plan.

## **What happened**

In 2012 Mrs R and her husband Mr R entered into a funeral plan arrangement with a funeral plan provider (the Provider). The Provider has since ceased trading and cannot provide the funerals paid for. Mrs R says she paid part of the cost on her Virgin credit card. So she feels Virgin should either refund her in full or provide the funeral arrangements she agreed with the Provider. So she asked Virgin to cover her funeral contract under Section 75 of the Consumer Credit Act 1974.

Virgin looked into the matter and couldn't find any evidence of it funding any transaction to the Provider. It noted it was only obliged to keep records for six years and the transaction Mrs R says she made would have been much longer ago. So it didn't refund her. So she brought her complaint to this service.

Our investigator felt that Virgin had treated Mrs R fairly in relation to the chargeback and that Mrs R's claim didn't show that Virgin was involved. So our investigator concluded that Virgin hadn't treated her unfairly. Mrs R didn't agree with our Investigator's assessment. So the complaint has been passed to me to decide.

## **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.

Mrs R has made many arguments on this matter. I've considered them all. But I'll only address the key issues here as I see them. I'm sorry to say that her complaint is unsuccessful for the following reasons.

### *Chargeback*

Mrs R's credit card is part of a card scheme operated by another company (not Virgin). Within this scheme there is a mechanism for banks to aid consumers with disputes with merchants such as the case here, which is called chargeback. The scheme has particular rules which need to be followed around chargeback. And banks can take a dispute throughout the entire chargeback process and not be successful because the final arbiter is the card scheme and not the bank.

Mrs R hasn't provided any persuasive evidence that Mrs R's card was used in this transaction. And Virgin isn't required to keep records indefinitely. And even if Mrs R was able to provide such evidence the card scheme has time limits for chargebacks including a 'long-stop' time limit which this dispute is substantially outside of. So a chargeback in these circumstances raised when Mrs R spoke to Virgin could not be successful in any event

because it is significantly outside the time limits. So Virgin hasn't treated Mrs R unfairly or caused Mrs R to lose out in relation to chargeback here.

### *Section 75*

There are some requirements set out in Section 75 of the Consumer Credit Act 1974 (CCA) which have to be met before deciding whether there was a breach of contract or misrepresentation by the Provider that Virgin could be held liable for. One of these is that there is a three-way contractual relationship between the supplier (the Provider here), the debtor and the creditor. Mrs R says she used her card to fund this transaction towards her funeral plan. However under this legislation it is for Mrs R to show she has a 'like claim' as to that against the Provider to the Creditor. It is not for Virgin to disprove it. And although Mrs R can show she had a contract with the Provider she cannot demonstrate that Virgin funded part of this agreement or that she used her Virgin card to pay the Provider. And she has to show she has a legal claim and Virgin then have to consider it fairly.

But having considered all the evidence available I'm not persuaded she's shown Virgin has treated her unfairly by saying there is no persuasive evidence that it is involved in this transaction at all.

### *Other matters*

For the sake of completeness I'll deal with some of Mrs R's other arguments. Mrs R says it's unfair that she has to prove that Virgin were involved. Unfortunately that is a requirement to make Virgin liable under this legislation. And after all it would be unfair if Virgin did have to pay considering it isn't the Provider nor is it responsible for the Provider ceasing trading. Just because Mrs R has lost out it doesn't mean Virgin should refund her here when it hasn't done anything wrong.

Mrs R says she uses her card a lot and that she must have used her Virgin card. However there is nothing persuasive in the evidence pointing to Virgin being involved in any way. And as I've described she has to prove her case as she would have to if she took the matter to a Court and made a 'like claim'.

Mrs R points to other banks having records from many years ago. This may well be the case. But it doesn't demonstrate that Virgin has done anything wrong. And if it hasn't done anything wrong it would be unfair on Virgin to have to pay out here when there's no persuasive evidence it was involved in any capacity.

In summary I think Virgin made a fair decision in not pursuing the chargeback any further. And I don't think it could be held responsible under S75 either. So I don't think I can fairly require Virgin to do more. So this complaint is unsuccessful.

I do appreciate that this isn't the decision Mrs R wants to read as she is clearly invested in this matter. But ultimately just because Mrs R has lost out doesn't make it fair to make Virgin pay when there is no persuasive evidence it was even involved in the transaction to the Provider. So I think Virgin treated her fairly.

### **My final decision**

For the reasons set out above, I do not uphold the complaint against that Clydesdale Bank Plc, trading as Virgin Money.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 20 October 2023.

Rod Glyn-Thomas  
**Ombudsman**