

## **The complaint**

Mr M complains about a decision taken by Clydesdale Bank Plc trading as Virgin Money ("VM") to not refund him £824.

## **What happened**

On 14 October 2022 Mr M purchased, using his VM credit card, a phone costing £854 from a company that I will call "B". Mr M asked for the phone to be delivered to a third party (not himself) and to a different address to his own.

On 27 October 2022 the phone was delivered. However, Mr M says it wasn't delivered to the third party he asked it to be delivered to or to the address he gave for delivery.

Mr M contacted VM about not receiving the phone and to request a refund of £824.

VM raised a chargeback with B. But on the chargeback being defended by B VM took the decision to hold Mr M liable for the disputed sum of £824.

On realising the above, Mr M raised a complaint with VM.

In August 2023 VM issued Mr M with a final response letter ("FRL"). Under cover of this FRL VM said it stood by its decision to not uphold Mr M's refund request under both chargeback and Section 75 of the Consumer Credit Act 1974 ("section 75"), but for poor service it had credited his credit card account with £50.

Mr M's complaint was considered by one of our investigators who came to the view that it should be upheld. He then went on to explain what VM should have to do to fairly and reasonably compensate Mr M.

Mr M reluctantly accepted the investigator's view. VM didn't confirm whether it accepted the investigator's view or not. And because of the latter, Mr M's complaint has been passed to me for review and 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.

I'm very aware that I've summarised this complaint above in far less detail than it may merit. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact my decision.

Secondly, I would add that where the information I've got is incomplete, unclear or contradictory, I've to base my decision on the balance of probabilities.

In considering whether VM acted fairly I'm considering its role as a provider of financial services. In that respect, the card protections of chargeback and section 75 are particularly relevant here.

Because I'm upholding this case, like the investigator, under section 75 I don't consider it necessary to cover chargeback in any detail as it doesn't provide Mr M with additional recourse here.

The general effect of section 75 is that if Mr M has a claim for misrepresentation or breach of contract against B he can also bring a like claim against VM.

Mr M is a consumer who purchased the phone from B who is a trader. The law implies certain terms into a contract of sale in these circumstances. In particular, the Consumer Rights Act 2015 ("CRA") implies certain terms into the contract regarding delivery of goods, it also defines delivery and talks about where risk resides until the goods come into the physical possession of the consumer. Specifically, the CRA says:

*"28 Delivery of goods*

*(1) This section applies to any sales contract.*

*(2) Unless the trader and the consumer have agreed otherwise, the contract is to be treated as including a term that the trader must deliver the goods to the consumer.*

*29 Passing of risk*

*(1) A sales contract is to be treated as including the following provisions as terms.*

*(2) the goods remain at the trader's risk until they come into the physical possession of –*

*(a) the consumer, or*

*(b) a person identified by the consumer to take possession of the goods."*

Having reviewed everything that the parties have said and submitted, I'm satisfied that:

- B contracted to deliver the phone to a Mr I at an address specified by Mr M which was a flat within a block
- B contracted to have delivery of the phone signed for
- B delivered the phone to an individual calling themselves A
- receipt of the phone was signed for by somebody who's (purported) signature begins with S
- the phone was signed for in the vicinity of the delivery address provided by Mr M, but there is insufficient evidence to support that it was delivered to the specific flat specified by Mr M
- Mr M has been consistent in his testimony to our service, a testimony that I find to be both plausible and persuasive

- the non-receipt of the phone has been reported to the police, something that I wouldn't expect to have happened had the phone been received by Mr I

Given what I say above I'm not persuaded – on the balance of probabilities – that the phone was delivered to Mr I (and therefore Mr M) and that this non-delivery to Mr I constitutes a breach of contract by B. And because of this breach of contract it follows that it's only fair and reasonable that Mr M should be treated as if he never entered into it.

Like the investigator I'm satisfied that VM's handling of this matter has caused Mr M a degree of distress and inconvenience for which he should be fairly compensated. And taking everything into account I can confirm that like the investigator I think £100 represents an appropriate sum for VM to have to pay Mr M in this respect over and above the sum of £50 it has already credited to his credit card account.

### **My final decision**

My final decision is that I uphold Mr M's complaint and find that Clydesdale Bank plc trading as Virgin Money – in addition to having already credited Mr M's credit card account with £50 – must:

- rework Mr M's credit card account as if the payment of £824 to B was never made, refunding any associated interest and charges – if this results in a credit balance Mr M should receive a refund plus interest at 8% simple from the date of that credit balance to the date of settlement\*
- pay Mr M £100 for the distress and inconvenience this whole matter has caused him
- ensure information recorded with credit reference agencies in respect of Mr M's credit card account reflects the above 'rework'

*\* HMRC requires Clydesdale Bank plc trading as Virgin Money to take off tax from this interest. If Mr M asks for a certificate showing how much tax has been taken off this should be provided*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 January 2024.

Peter Cook  
**Ombudsman**