

The complaint

Mr F complains that Clydesdale Bank plc, trading as Virgin Money, won't refund to him the money that he paid to a debt recovery company.

What happened

Mr F was owed money by a third party and entered into a contract with a debt recovery company in November 2018 for it to provide him with services relating to a single debt referral. He paid the debt recovery company £7,560 using his Virgin Money credit card.

He claimed a refund of that amount from Virgin Money under section 75 of the Consumer Credit Act 1974 but it said that it was unable to see where the debt recovery company had breached its contract or misrepresented the sale of the service. Mr F wasn't satisfied with its response so complained to this service.

Our investigator didn't recommend that his complaint should be upheld. She said that it was difficult to conclude that there had been a breach of contract or misrepresentation by the debt recovery company so she didn't think that Virgin Money had acted unfairly in rejecting Mr F's claim.

Mr F has asked for his complaint to be considered by an ombudsman. He has explained why he strongly feels that the debt recovery company was obliged to provide him with an update on the service it was providing. He says that the second and last visit by the debt recovery company to the third party's premises was in February 2019 and he continued to receive monthly payments directly from the third party up to and including July 2019, even after all communication with the debt recovery company had ceased in April 2019. He says that the third party didn't go into liquidation until sometime later and, if he'd been told that the debt recovery company was no longer providing a service and pursuing the third party on his behalf, he could have explored alternative avenues to recover the debt. He says that he vehemently refutes the suggestion that the debt recovery company has not misrepresented its service.

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 agree with the conclusions reached by the investigator for these reasons:

- in certain circumstances, section 75 of the Consumer Credit Act 1974 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract by the supplier or if there's been a misrepresentation by the supplier which induced the consumer to enter into the contract;
- to be able to uphold Mr F's complaint about Virgin Money, I must be satisfied that there's been a breach of contract or misrepresentation by the debt recovery company and that Virgin Money's response to his claim under section 75 wasn't fair or

reasonable – but I’m not determining the outcome of Mr F’s claim under section 75 as only a court would be able to do that;

- Mr F entered into a contract with the debt recovery company in November 2018 for it to “... *provide a recovery service in relation to the individual debt* ...” that he was owed by a third party – the contract doesn’t describe in any more detail the service that was to be provided and doesn’t describe the outcome that would be achieved;
- the contract said that the debt recovery company was under no obligation to provide interim written reports and that it would “... *provide updates on the case where an update is required to be given*”;
- the debt recovery company visited the third party at least twice and provided reports which said, amongst other things, that the third party had a payment plan with Mr F and had agreed to pay him £500 each month;
- it’s clear that Mr F expected the debt recovery company to do more to recover the debt from the third party and is frustrated that he’s only received the payments under the payment plan;
- I sympathise with Mr F for that and understand the frustration that he feels, but he agreed the contract with the debt recovery company and I consider that the terms of that contract are not clear enough to show what it was agreed that the debt recovery company would do;
- it’s clear that there were discussions between Mr F and the debt recovery company about the services that were to be provided but I’ve seen no evidence to clearly show what was agreed between them;
- the debt recovery company hasn’t recovered any more money for Mr F than was agreed under the payment plan and he says that it didn’t provide him with any further updates about the debt after April 2019 – but I can only uphold his complaint about Virgin Money if I’m satisfied that there’s been a breach of contract by the debt recovery company or if there’s been a misrepresentation by the debt recovery company which induced him to enter into the contract;
- this is a finely balance complaint but, having considered all of the information provided by Mr F and Virgin Money, I’m not persuaded that the actions (or inactions) of the debt recovery company are enough to constitute a breach of contract or misrepresentation in these circumstances;
- I consider that Virgin Money’s response to Mr F’s claim has been fair and reasonable; and
- I find that it wouldn’t be fair or reasonable for me to require to Virgin Money to refund to Mr F all, or any part, of the money that he paid to the debt recovery company, to pay him any compensation or to take any other action in response to his complaint.

My final decision

My decision is that I don't uphold Mr F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 14 October 2021.

Jarrold Hastings

Ombudsman