

## The complaint

Mr T complains that Clydesdale Bank Plc trading as Virgin Money has rejected a claim under section 75 of the Consumer Credit Act 1974 ("section 75") regarding a faulty car he'd acquired using his credit card.

## What happened

In April 2019 Mr T purchased a used car from a dealership. He paid both the deposit and the remaining cost of the car with his credit card provided by Virgin Money. The car cost £9,995, was around eight years old and had a mileage of just under 83,000. It came with a three- month warranty.

Around five days after collecting the car Mr T contacted the supplying dealer and said he'd discovered a crack in the windscreen and that the air con wasn't working properly. He later raised issues as to the power socket/cigarette lighter socket not working and the car having a whirring noise. The dealer agreed to repair these issues and the car was later returned to Mr T.

A few days after the car had been returned Mr T contacted the supplying dealer again and said he was experiencing a vibration in the central console, something sounding like it was loose or rolling in or around the driver's door and a knocking noise in the passenger nearside. Mr T told the dealer that the knocking noise could be due to a faulty shock absorber. The dealer said they hadn't heard any noises when driving the car back to Mr T's home following the earlier repairs. The dealer agreed to look at the car.

Mr T later raised issues about the brake pad warning light illuminating, an issue with the fuel gauge, the driver's seat belt and a wing mirror. The retailer says they fixed all the issues raised.

In June and July 2019 Mr T raised issues about the seat memory switch not working and a humming noise.

In August 2019 Mr T made a claim to Virgin Money to return the car and have the cost reimbursed on the grounds that the issues with the car had not all been resolved. He said the supplying dealer had stopped answering his emails and calls. Mr T also raised an issue with the service history as he had been provided with a replacement service book. He said that he had been told the car had been serviced shortly before he'd acquired it and that another one wouldn't be due for 10,000 miles however the service warning light had recently illuminated. Mr T said he'd only driven around 2,500 miles in the car.

In September 2019 Mr T raised an issue with water ingress into the passenger footwell. He took the car to another garage who reported that they had found a plastic container that wasn't a legitimate car part in the space above the pollen filter in the car's engine. The garage also said that it found sealant under the "*screen seal to mask the leak*". Photos of the plastic container and its position in the engine were also provided.

Virgin Money investigated Mr T's claim first as a chargeback and then under section 75.

Virgin Money declined Mr T's claim as it said that the supplying dealer had informed it that all the issues with the car had been resolved and there was no evidence that the remaining issues were faults that had been present from the point of supply.

Mr T complained to Virgin Money about its decision to decline his claim. Virgin Money didn't uphold Mr T's complaint as it said no new information had been provided as to the condition of the car.

Mr T complained to this service. He said the car had been misrepresented to him as the advert had set out it came with a full-service history when the service history couldn't be verified because the book was a replacement. He also said the car didn't come with a USB connection nor with audio streaming as had been claimed.

Mr T also said that there had been a breach of contract as the car wasn't of satisfactory quality due to a knocking noise that had persisted and water ingress in the front passenger footwell which was linked to the plastic container that had been placed in the engine.

During this service's investigation Mr T raised further concerns with the car. He said that the water ingress had led to damage to the electrical system. He provided an invoice for repairs to the Bluetooth module that had been carried out in February 2020 by another garage. The invoice set out that in the garage's opinion the water ingress had been present for two years and this had led to the module needing replacement.

Mr T provided a report from the garage he had used to inspect the car for various issues in May 2019, September 2019 and February 2020. This garage reported *"On inspection and below the windscreen scuttle panel I found a takeaway container above the pollen filter for the vehicle and a collection of black silicone sealant. In my professional opinion the takeaway container and sealant were aged and had been placed in the vehicle prior to the sale to Mr (T) in an attempt to mask the water ingress"*.

Virgin Money asked Mr T to take the car to a Motor Ombudsman approved garage for an inspection in respect of the water ingress. This inspection took place in August 2021. The garage hosed the car and found that water had leaked in through the bulkhead, pollen filter and the nearside lower windscreen.

Virgin Money said that it would be fair to offer Mr T £750 towards the cost of repairs. It said that Mr T has been able to use the car since he'd acquired it, the original issues raised had been repaired by the supplying dealer and the later issues had arisen after the warranty period had ended and were likely due to wear and tear.

Mr T rejected Virgin Money's offer. He said the water ingress was the most serious issue and the evidence showed this had been present since the point of supply as the container had been in the car for a long time. Mr T also said the car continued to have a knocking noise. He said his preferred option was to return the car and have full cost of the car reimbursed.

Our investigator said she thought Virgin Money's offer was fair and reasonable. She said the car had travelled around 83,000 miles when Mr T had acquired it and so it wouldn't be reasonable to expect it to have been fault free. Mr T had been able to drive around a further 21,500 miles in the car since he'd acquired it.

Our investigator said the evidence didn't demonstrate the current faults with the car had been present at the point of supply.

Mr T disagreed with the view of our investigator. He said the evidence about the container in the engine and the age of the sealant showed it had been placed in the engine prior to him acquiring the car. He said he thought the container had been placed in the engine to mask the water ingress. He said he wanted to reject the car which had suffered a number of issues and although it had been usable, he had had to carry out repairs due to the damage caused by the water.

Mr T said that an issue had been found with the wiring loom when investigating a problem with the rear lights. He said the car now required a new wiring loom.

As the parties were unable to reach an agreement the complaint was passed to me. I issued a provisional decision along the following lines.

My role here was to decide whether Virgin Money had acted fairly and reasonably in its response to Mr T's claim. I'd seen that Virgin Money had been in contact with the retailer and that there had been repairs carried out to the car. However, Mr T said that there were still issues remaining that hadn't been fixed and which had been present since he'd acquired the car. Mr T also said that the car had been misrepresented to him by the dealership.

Where evidence is contradictory or missing then I have to decide what I think is the most likely thing to have happened.

Mr T's claim for reimbursement of the cost of the car was considered by Virgin Money both under the chargeback scheme and section 75. Chargeback, unlike section 75, isn't enshrined in law but is instead part of a scheme with rules which vary depending on the particular card used. It may apply when goods are either not delivered or are damaged and may assist when the goods cost less than £100. There is also a 120-day time-limit to make a claim once the goods have been received.

Section 75 of the Consumer Credit Act 1974 may apply when the goods purchased by a credit agreement cost over £100 up to a limit of £30,000. The general effect of the section is that if a consumer has paid for goods or services with a credit agreement, such as a credit card, and they have a claim against the supplier of those goods or services for misrepresentation or breach of contract, they are given a like claim against the credit provider, which here is Virgin Money.

Mr T had raised both misrepresentation and breach of contract in respect of the car. I looked first at the condition of the car and whether Virgin Money had fairly decided there was insufficient evidence to support Mr T's claim for a breach of contract.

Under the Consumer Rights Act 2015 ("CRA") there is an implied term that when goods are supplied the quality of the goods is satisfactory. The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price, and all other relevant circumstances.

The relevant law also says that the quality of the goods includes their general state and condition, and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

Here, the car wasn't new being around eight-years old and with a mileage of 83,000. I thought that, taking into account these things, a reasonable person would have expected there to be issues with maintenance and repair since components of the car would have

been subject to wear and tear through use. So, unlike a new car, there wouldn't be expectation that the car was fault free.

Mr T had raised a number of different faults with the car which he said arose within a short period of acquiring it. Virgin Money said that the faults were all repaired by the supplying dealer and that there wasn't enough evidence to say that the remaining issues with the car weren't due to wear and tear. It had, however, offered Mr T £750 towards the repairs needed for the water ingress.

Mr T said the main concerns with the car were the knocking noise and the water ingress. However, I noted that the knocking noise didn't appear to have been diagnosed. The invoice provided by Mr T from the garage that had investigated this in May 2019 suggested it could have been an issue with the rear suspension. Since that time Mr T had been able to drive the car an additional 21,500 miles, the car had been serviced and passed two MOT's. And I hadn't seen that any repair work had been required in relation to this knocking noise. In light of that I didn't think I could reasonably say this was a serious issue. So, I didn't think there was sufficient evidence to say this knocking noise was a fault with the car that made it of unsatisfactory quality. It hadn't appeared to have an impact on Mr T's use of the car.

I'd seen that the cause of the water ingress was also undiagnosed. But both the garage that inspected the car at Mr T's request in September 2019 and the Motor Ombudsman's approved garage that inspected it in August 2021 had found there was water entering the car around the pollen filter (as well as other areas). I'd seen that there was a plastic container found in the car's engine and it had been thought this had been placed in the engine to act as a makeshift pollen filter. Mr T had also provided a clear photo of this container.

I didn't think the purpose of this plastic container was entirely clear from the evidence as it was originally described as a makeshift pollen filter but later its presence was said to be in order to conceal the water ingress. However, this wasn't a legitimate car part and I'd also seen that the garage that saw the car in September 2019 and provided a later report about the car, said that there was a pollen filter present although it was in a poor condition.

I noted that when the car was hosed in August 2021, as part of the test to find where the water was leaking into the car, it was found to be entering around the pollen filter which was where this plastic container was located. There was also a leak from the nearside of the windscreen which had been replaced by the supplying dealer shortly after Mr T acquired the car.

I hadn't seen that the supplying dealer had provided any views about the plastic container and neither had the garage that examined the car in August 2021. The second garage only reported on where the water was leaking into the car.

Looking at the evidence, I was persuaded by the report provided by the garage that saw the car in September 2019 that this plastic container had been in place prior to Mr T acquiring the car. In the absence of any other explanations for its presence, then I thought it was more likely than not that, as this garage had later reported, this container together with the sealant that had been found had been put in place to mask the water ingress. I further accepted that the water ingress had resulted in damage to the Bluetooth module which had later been replaced.

Virgin Money said that the fault with the water ingress arose after the warranty period had come to an end. But I thought it was reasonable to expect water ingress to be an intermittent issue and so I wasn't surprised it had taken time for Mr T to find this problem.

And as I accepted that the presence of the plastic container was linked to the water ingress and that this container had been placed in the car's engine prior to Mr T taking the car, then I was satisfied the car had a fault at its point of supply. Taking into account the nature of the fault and when it first arose, I thought the car wasn't of satisfactory quality at the point of supply.

Under the CRA the retailer, and so Virgin Money, has an opportunity to repair. I'd seen that the water ingress didn't appear to have been raised with the supplying dealer who had carried out a number of other repairs. Virgin Money had offered £750 towards the cost which Mr T had rejected as he said this wasn't sufficient as any repairs were likely to be well in excess of £2,000. I accepted Mr T's view that the costs and extent of the repairs required for this issue were unknown.

I didn't think Virgin Money had acted fairly in assessing the evidence as to whether there had been a breach of contract between Mr T and the supplying dealership. I thought the evidence regarding the plastic container showed it had been in situ before Mr T had acquired the car and that it was linked to the water ingress the car was suffering from. Virgin Money said that as Mr T had been able to use the car, it was fit for purpose, but I didn't think it was reasonable to say that water ingress was an acceptable fault in car of this age and mileage. I'd seen that it had led to a repair to another part being required and had frustrated Mr T.

As this has been an ongoing problem over a long period and the possibility of whether it's actually repairable or not was unknown, I thought the fairest outcome would be for Virgin Money to accept there had been a breach of contract and under section 75 and this should be remedied. I thought it should agree to collect the car at no cost to Mr T.

In regard to reimbursement, due to the amount of use Mr T had been able to make from the car I disagreed that he should be repaid the full amount he'd paid for it. It's fair that he covers the use he has had. Looking at an established guide on car values, I'd seen that the Cap value for this car at this age and mileage (but without the water ingress fault) was £6,225. So, I thought it would be fair for Virgin Money to reimburse Mr T £6,225 for the car, £187.20 for the car's inspection in September 2019 which reported on the plastic container and £441.60 for the replacing of the Bluetooth module. This made a total reimbursement of £6,853.80.

However, I didn't agree Mr T should also be reimbursed for any of the other inspections and repairs as I didn't have sufficient evidence that faults with the driver's seat or knocking noise were faults that had been present from the point of supply. I also didn't think it would be reasonable to ask Virgin Money to reimburse Mr T any sums paid to hire cars. I've seen that he accepts he was able to drive the car and I think hiring a car for any longer distances he was undertaking was a choice he'd made.

As I therefore thought that Virgin Money hadn't fairly consider Mr T's claim under section 75 in regard to breach of contract due to the condition of the car, I didn't think it was necessary to deal with the other matters raised by Mr T. That was whether there had been a misrepresentation of the car or whether Virgin Money had dealt fairly with a claim for chargeback as I was satisfied any findings wouldn't change my view as to what was a fair settlement for Mr T's complaint.

For the reasons given I intended to uphold Mr T's complaint.

Virgin Money hasn't asked me to review any parts of my provisional decision. Mr T has asked I look again at my proposed settlement as he says due to the length of time this has taken to resolve he has had to spend money maintaining the car and its value has

depreciated. He has also raised a second set of repairs that were undertaken in January 2022 due to further damage to the Bluetooth and DAB module from the water ingress which amounted to £816.

### **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 have looked again at the conclusions I have reached on the evidence that has been provided and I am still satisfied that the car had a fault at its point of supply to Mr T. I also still think that Virgin Money didn't fairly consider Mr T's claim under section 75 for the breach of contract in respect of the condition of the car.

Mr T has asked me to look again at the settlement that I had proposed. I accept that it would be fair for Mr T to be reimbursed the cost of the repairs undertaken in January 2022 as these arose from the water ingress. However, and although this will be of disappointment to Mr T, I haven't changed my view in regard to the remainder of my provisional settlement as I still think that's fair in the circumstances.

I appreciate this has taken time to resolve but I can't reasonably say that had Virgin Money accepted Mr T's section 75 claim earlier that he would have received the full cost of the car back. I don't know what would have been the outcome as it's possible the car may have found to be repairable at that time, and even if it had been agreed the agreement should be ended and the car returned, then a deduction for use could still have been applied.

I still think it's fair for Mr T to pay for the use he has had of the car. This includes the usual costs of maintaining and running the car as these are the expected expenses of running a used car. I understand the car has depreciated over time in its value, but I've asked that Virgin Money reimburse him the value the car should be had it not suffered the damage from the water ingress. This means Mr T is in the position he would have been in had the car not been faulty.

So, for the reasons set out above I'm upholding Mr T's complaint.

### **Putting things right**

I'm asking Virgin Money to do the following:

- Arrange for the car to be collected at no cost to Mr T
- Reimburse Mr T £6,225 for the car
- Reimburse Mr T the amounts of £187.20, £441.60 and £816 for the inspections and repairs carried out to the car due to the water ingress. These amounts to have interest added at the yearly rate of 8% simple from the date of payment until the date of settlement.

### **My final decision**

For the reasons set out above I'm upholding Mr T's complaint. I'm asking Clydesdale Bank Plc trading as Virgin Money to do the following:

- Arrange for the car to be collected at no cost to Mr T
- Reimburse Mr T £6,225 for the car

- Reimburse Mr T the amounts of £187.20, £441.60 and £816 for the inspections and repairs carried out to the car due to the water ingress. These amounts to have interest added at the yearly rate of 8% simple from the date of payment until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 14 June 2022.

Jocelyn Griffith  
**Ombudsman**