

The complaint

Mr S complains about Clydesdale Bank Plc trading as Virgin Money's ("Virgin Money") decision to refuse him the refund he has requested.

What happened

Mr S is represented by a relative, but I'll refer to everything that's been said on his behalf as if Mr S had said it himself, to keep things simple.

In August 2020 Mr S used his credit card account with Virgin Money to pay, in part, for a car. The car cost £10,700. Mr S explains he only paid for the car because the seller who I will call "E" told him that it was compliant with the requirements of London's Ultra Low Emission Zone (LULEZ). However, it turns out the car does not meet this requirement. Once Mr S found this out, which he did within days, he returned the car to E. E now has the car in its possession, but it refuses to refund Mr S's money. E suggests it is entitled to keep the money because Mr S returned the car damaged but has not sent any information to Mr S or Virgin Money to demonstrate this. Neither has E shown that the cost of any repairs is the same sum as Mr S paid for the car.

As well as his credit card with Virgin Money, Mr S used his credit card account with a third party I will call "N", to pay for the car, a payment in cash was also made to E. Through Virgin Money Mr S has recovered some of this money (£1,700) via a process known as chargeback. It appears though that the remainder of the money i.e. the sum he paid using his credit card from N (£2,000) and the cash (£7,000) have not been refunded. Therefore, Mr S wants the remainder of this money.

Mr S explains that in his opinion, he was the sole contracting party in relation to the contract of sale with E. It appeared Mr S initially said that the car was a joint purchase with his sister, but Mr S now tells us he never claimed the car was a joint purchase at any point, I'll mention more about this below. In any event, when he complained to us, he said.

"At the time of the sale, I requested that the DVLA vehicle registration document to be in my sister's name & address & everything else including invoice in mine as I am the buyer/owner & she will only be the registered keeper temporarily & occasionally use the vehicle, the salesperson refused as paperwork would not match on the admin side & will leave a discrepancy therefore it has to be in either one of our name & address. Though they did allow the car to be insured in my name to drive away.

I explained the only reason for the registration to be in my sister's name is so she will have no problem obtaining a parking permit from the local authority, as in my case, I live in a car free property which means no permit will be provided by the local authority for anywhere to park safely & legally. The idea was that I would source private parking soon."

It is Mr S's position that by making payments towards the purchase of the car and by insuring the car in his name for one day, he has demonstrated that he is the sole purchaser of the car.

Virgin Money's stance is that it can help Mr S no further. This is because Mr S seeks to rely on rights, he believes he has under Section 75 of the Consumer Credit Act 1974. The general effect of Section 75 is that if a consumer has a claim for misrepresentation or breach of contract against the supplier, he can also bring a like claim against the finance provider, provided certain conditions are met.

One of these conditions is that there must be a very particular type of relationship in place between Mr S, Virgin Money, and E. This relationship is known as a debtor-creditor-supplier relationship. For this to be in place Mr S needs to be a contracting party in relation to the contract of sale with E. The difficulty is that Virgin Money has concluded that all the contractual documents are in Mr S's sister's name, as a result, she not he is the contracting party. In its internal notes in which it recorded what Mr S said to it when he complained at first, it notes Mr S told it the car was a "*joint purchase*". But Virgin Money has rejected this assertion based on the contractual documents. Moreover, it does not agree that because the car was insured in Mr S's name for one day this insurance policy should be counted as a contractual document. Further, nothing about the wider circumstances of the purchase suggest to it that Mr S was a contracting party

In addition, Virgin Money did not agree that Mr S has the protection of Section 75 because it did not consider that Mr S had demonstrated that he would benefit from the car.

For these reasons Virgin Money does not agree that it must take responsibility here and give Mr S the refund he requires.

Dissatisfied, Mr S came to our service.

Once the complaint was with us both Mr S and Virgin Money provided us with further information.

Mr S told us he was the one who found the car and he was the one who contacted E to arrange a viewing. Mr S explained that both he and his sister went to view the car at E's premises. Although Mr S suggests his sister only came along because he thought she would need to be there so that she could be made the registered keeper of the car. Mr S reiterated that it was not a joint purchase but a sole purchase he said.

"Though it has been stated that [Mr S's sister] would share the vehicle, it has been clarified ...that it is more of borrowing as & when a need arises as a return of favour for obtaining the parking permit, this unfortunately did not materialise as the vehicle was not used only after 3 days of purchase when realising the mis-selling issue."

Virgin Money added that E had told it Mr S was not present when the car was purchased. Moreover, E had never accepted the rejection of the car in any event, because it did not accept that Mr S's sister had grounds to return the car, amongst other reasons. Virgin Money pointed out that Mr S had initially indicated that the car was a joint purchase with his sister but the credit card account with it was not a joint account.

I issued a provisional decision this is what I said about what I'd provisionally 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."

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. 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.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Mr S seeks to rely on the rights he believes he has under Section 75 to require Virgin Money to provide him with a refund as a remedy for what he sees as misrepresentation and breach of contract.

I think it's important to set out my role here. In considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under Section 75. In deciding what's a fair way to resolve Mr S's complaint, I've taken Section 75 into account. But that doesn't mean I'm obliged to reach the same outcome as, for example, a court might reach if Mr S pursued a claim for breach of contract or misrepresentation. This service is an alternative to the courts and uses different rules.

Before I can look at misrepresentation or breach of contract, I need to look at whether I think there is a valid debtor-creditor-supplier relationship in this instance. For such a relationship to exist, in relation to the contract of sale for the car, Mr S would have to be the debtor, Virgin Money would have to be the creditor, and E would have to be the supplier. This means that there would need to be a contractual relationship between Mr S and E. Mr S says there is one, Virgin Money says there is not.

As a starting point when trying to assess who are the parties to a contract it is reasonable to look at the contractual documents. I've seen the invoice from E, which I think is a contractual document, and that is in Mr S's sister's name. Mr S explains this was done at E's insistence, but it really does not make sense in the context that E had any opinion about this one way or another. It might have been different if it was retaining ownership of the vehicle but that is not the case here. However, if Mr S's sister was the purchaser and Mr S was merely discharging her obligation to pay for the car, then it follows that the contractual documents would be in her name alone.

I also note E says Mr E was not there when the car was purchased which might also explain why his details do not appear on the contractual documents. That said, I find E's account of events, to be the evidence which I can give the least weight to given the information I have on the file about its behaviour towards both Mr Sand Virgin Money. So I find it likely he was there at the time of the purchase.

Moreover, Mr S's sisters name is on the registered keeper document and I consider this to be a contractual document too. I take on board, that Mr S explains that his sister's name was only ever on the registered keeper document for the purposes of her obtaining a parking pass. But there was no reason why this was necessary, Mr S could have bought the car in his name and then subsequently gifted the car to his sister so she could be the registered keeper. E did not have to be involved at all for this to happen. And his sister did not need to view the car with Mr S at E for this to happen.

Moreover, it seems that Mr S's sister would have had to have said she was the owner of the car for the purposes of obtaining the parking permit. So it appears in one scenario i.e. when applying for the parking permit, Mr S's sister was going to say she was the contracting party

and the owner of the car, but in another context i.e. this complaint Mr S is asking this service to accept that he was at the same time the contracting party and the owner of the car. It is possible, in theory, that both Mr S and his sister were joint purchasers of the car. But I discount that because Mr S is clear his stance now is that there was no such joint purchase.

I also note Mr S's account of events relating to who was intending to buy the car has been inconsistent. First, he said it was a joint purchase then he told us it was a sole purchase. I'd have expected him to have known from the get-go what type of purchase it was. With such discrepancies in mind I have some difficulty accepting the accuracy of Mr S's recollections on this point.

Moreover, I don't think the insurance document is a contractual document in relation to the contract of sale. I note the insurance was for only one day, so it does not tell me who ultimately was intending to drive the car in any event. We have asked Mr S to provide information about this but so far we have not received it.

Furthermore, I think if for any reason E had gone to court in relation to the contract, I think the person it would have acted against would be Mr S's sister not Mr S. I say this because on the face of it that is who the contract was made with. Which also goes towards suggesting that the only contracting parties in relation to the contract of sale were Mr S's sister and E.

I've also looked at the wider circumstances of this complaint to assist me coming to a conclusion about who, on balance, was the contracting party with E. I recognise that the car was insured for one day in Mr S's name and he appears to have driven away the car the day it was purchased., but that, by itself, does not persuade me that he was a contracting party.

I also recognise that it was Mr S who returned the car to E. Which is what I might have expected him to have done if he was the contracting party. That said it was Mr S's sister not Mr S who wrote a letter of complaint in August 2020 to E and she suggests in that letter that she is the purchaser and she asks for a refund for the purchase price and for what appear to be her consequential losses. I note in a later letter to E she talks about Mr S being the purchaser. But appears that letter was written after Mr S had spoken to Virgin Money. Therefore, I place more weight on what Mr S's sister said before it might have become clear that to succeed under Section 75 Mr S had to be a contracting party.

For all of these individual reasons, in the circumstances, I am not persuaded that Mr S was a contracting party to the contract of sale. It follows that I'm not satisfied that Virgin Money has acted inappropriately in refusing the refund and I have no proper basis to tell it to act differently."

The provisional decision I reached was that I did not intend to uphold Mr S's complaint.

I invited both Mr S and Virgin Money to reply to the provisional decision. We received no response from Virgin Money. But Mr S sent in several responses.

In summary, Mr S's responses covered the following points. Mr S told us that he was "exhausted" from pursuing this complaint and that there was "no justice". Mr S reiterated his previous stance.

Mr S suggested he had never indicated that his sister was the joint owner of the car. He underlined that he had benefitted from the use of the car so this from his perspective showed he was a contracting party.

Further, Mr S pointed out just because his sister was the registered keeper does not mean she was the owner of the car. Mr S added:

“It was suggested that my sister would claim to be the owner of the car when applying for the permit which is incorrect, she would have correctly claimed to be the registered keeper as the registered keeper is not necessarily the owner.”

Mr S commented:

“The suggestion that the vehicle could have been purchased then gifted to my sister also defies the point for the aim of obtaining the permit, it will also mean that a new keeper is then added which decreases the value of the car.”

Mr S pointed out that his sister only wrote to E after E refused to speak to him. He pointed out that in one of her letters his sister asked that E refund the money paid for the car either to her or to Mr S.

Moreover, in response to a question from us, he confirmed that the car tax had been paid for by his sister, but that he had intended to pay his sister back the following day. It was not clear from Mr S's response if he did pay her back. Also in response to a question from us Mr A told us that the car had only ever been insured for one day. After that it was not insured.

Mr S indicated that he was well aware of how Section 75 operated before he complained to Virgin Money. He added *“I therefore did not change my narrative later to fit the section 75 criteria”*.

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 thank Mr S for his response to the provisional decision. It has been helpful that Mr S took the time to set out his views on the provisional decision, so that I have been able to gain a fuller understanding of his position and concerns. I've reviewed the complete file again and revisited my provisional decision.

I regret to hear that Mr S is exhausted by this complaint and that he believes that the outcome of his complaint so far has given him no justice.

The question I have to look at here before I can look at whether there has been a misrepresentation, or a breach of contract is whether there is a valid debtor-creditor-supplier relationship in this complaint.

When I look at this point my starting point was to look at the contractual documents and the wider circumstances.

I already outlined the situation with the contractual documents in the provisional decision and why this led me to think that Mr S's sister is the contracting party. Mr S has added nothing new in response to these points. I'll add that being a beneficiary of a contract does not, in itself, make a person a party to a contract. I did not go into this point in the provisional decision as I did not think it was necessary as it is irrelevant. But I mention it now here because Virgin Money mentioned it and then Mr S responded to this point.

I think Mr S has been inconsistent in his version of events with regards to whether the car was a joint or sole purchase. Virgin Money's notes of an early conversation with him talks about him telling it the car was a joint purchase. I see no reason in the circumstances why it

is likely those contemporaneous notes would be inaccurate. His position later changed to say that the car was a sole purchase. I'd have expected Mr S to have given a consistent account of this point. The changes in his position have impacted on the weight I feel able to give to what he says about this issue.

Further, I take Mr S's point the registered keeper of a car is not necessarily its owner. However, I think it was significant when I look at the wider circumstances that Mr S's sister was going to tell the parking permit authorities she was the registered keeper of the car. I think it is implicit by doing this she was saying she was going to use the car day to day hence the need for a parking space. So when talking to the parking permit authorities she was asserting one type of relationship with the car. Yet when Mr S brings his complaint to us he suggests she had a different type of relationship with the car. That is an invitation to use the car from time to time entirely at Mr S's discretion and not for day to day use. This inconsistency too impacts on the weight I am able to place on what I've been told.

Further, it would not have defeated the purpose of the exercise for Mr S to have purchased the car in his name first and then let his sister become the registered keeper after him. After all, as Mr S himself tells us all his sister needed, in order to apply for the parking permit, was to be able to show at that the time she applied for the parking permit she was the registered keeper. I can see that having an extra registered keeper might have decreased the value of the car, but it is only now Mr S is telling us that was part of his thinking at the time. I don't find any of this persuasive.

It may well be that E would only deal with Mr S's sister. This underlines that E as a contracting party thought it had only contracted with Mr S's sister. That then strengthens the notion that there is no valid debtor-creditor-supplier relationship here.

I don't think Mr S's sister's letters help him. In at least one of her letters she asserts her rights as a contracting party she tells E that she might take legal action against it. She would have no standing to do this if she was not a party to the contract with E. It does not go to show that Mr S rather than she was a contracting party just because she suggests E could send the refund to Mr S. There appears to be no dispute that Mr S paid money towards the purchase of the car. Therefore it makes sense that any refund should go back to the account from which the money came.

It does help Mr S's complaint that his sister paid for the car tax there was no need for her to do this as far as I can see in order to support her application for the parking permit. I might have expected Mr S to have insured the car if he was the owner, but it appears he did not aside from for one day.

As I have mentioned above I think Mr S's submissions have altered over time. And it is noticeable that he placed greater emphasis on sole ownership as the complaint progressed. But I have no reason to doubt what Mr S says about his knowledge about how Section 75 operated.

I've not been persuaded by the points raised by Mr S in response to the provisional decision. It follows I have come to the same conclusions for the same reasons as I did in it.

Your text here

My final decision

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 October 2022.

Joyce Gordon

Ombudsman