

The complaint

Mrs L complains about a decision by Clydesdale Bank Plc, trading as Virgin Money, not to uphold a claim she made to them under section 75 of the Consumer Credit Act 1974 ("section 75").

What happened

I issued my provisional decision on this complaint in December 2022. An extract from that provisional decision is set out below.

Mrs L bought a used car from a dealer I'll call "C" in October 2021. The car was a little over 10 years old and had already completed about 127,000 miles. Mrs L paid £600 towards the purchase price with a credit card provided by Virgin Money. The car was advertised as having a full service history (FSH).

Mrs L was unable to resolve problems she had with the deal, so she contacted Virgin Money who she said she had a like right to claim against under section 75.

When matters couldn't be resolved with Virgin Money Mrs L referred her complaint to this service. Our investigator thought there had been a breach of contract as he was persuaded the car hadn't been of satisfactory quality. He suggested the business refund the cost of a door lock replacement; the cost to replace a mis fuel reset tool; the cost of the diagnostic Mrs L had to commission; and he also thought the business should replace all four tyres to the manufacturer's recommendation and to the standard expected on a car of this age. The investigator didn't agree that the deal had been misrepresented to Mrs L. He noted she'd suggested she had been incorrectly informed the car had only been on the market for six weeks, but he didn't think Mrs L had sufficient evidence to substantiate that claim. He also noted that Mrs L had suggested the car hadn't had the FSH it was supposed to be provided with, but he didn't agree.

Mrs L didn't agree with the investigator's view, she provided a detailed chronology of events and asked for the complaint to be escalated. The complaint has therefore been passed to me, an ombudsman, to provide a decision.

What I've 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.

I'm expecting to uphold the complaint but on broader grounds and that means the redress I'm suggesting is more comprehensive. I'm therefore issuing a provisional decision to give the parties time to respond to those new findings.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here, I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is

relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made in part or in full with a credit card, as is the case here, it might be possible to make a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

Breach of contract

The Consumer Rights Act (2015) is the relevant legislation. It says that the car should have been of satisfactory quality when supplied. The relevant law also says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price, and all the other relevant circumstances.

In a case like this which involves a car the other relevant circumstances would include things like the age and mileage at the time the car was supplied to Mrs L. The car here was ten years old and had already completed significant mileage of 127,000. I think a reasonable person would therefore expect quite a bit of wear and tear, but I think they'd still expect the car to be able to drive over 30mph without issue and to be able to access all doors.

Within the first six months Mrs L picked up several problems with the car. The relevant legislation explains we are to assume those faults were present at the point the car was supplied unless the business can demonstrate otherwise.

The door lock problem was identified shortly after Mrs L collected the vehicle. Virgin Money haven't demonstrated it wasn't present when the car was supplied, and I think they are therefore responsible for putting things right. Mrs L wanted the repair cost refunded to her and I think Virgin Money should do that and that they should add interest to the refund as Mrs L has been deprived of that money.

The mis fuel reset tool was also missing and for similar reasons Virgin Money should also refund the cost of replacement that Mrs L incurred, adding interest to the refund.

There's no dispute that Mrs L experienced significant vibration and noise when she drove the car over 30 mph. The dealership's chosen repairer identified that was due to tyre mismatch. Whilst the tyres may have individually been in road worthy condition the mismatch and variation in tread wear was causing a problem that I think a reasonable person would consider unsatisfactory.

As the complaint hasn't been resolved yet and Mrs L has continued to experience the problem she has explained that it hasn't been possible to take the car on longer/faster runs where the engine could reach the temperature required to regenerate the diesel particulate filter (DPF). She's therefore had to take the decision to replace all four tyres to resolve the issue. The investigator suggested that the business should "replace all four tyres to the manufacturer's recommendation and to the standard expected on a car of this age". I don't think that was a practical solution as it would be difficult to source used tyres with equivalent wear. I think Mrs L has experienced delays because of Virgin Money's failure to investigate this issue thoroughly. Whilst a replacement of all tyres with new ones may be overly

generous given the age and mileage of the car and the wear on the tyres since fitted, I think given the inconvenience Mrs L has experienced not being able to drive at speed without excessive noise and vibration; the delays she's experienced getting an adequate response from the business on this issue; and the fact the car shouldn't have been provided in this condition, a full refund for all four tyres is reasonable.

Misrepresentation

If Mrs L was told something that was false and that led her to enter into an agreement she wouldn't otherwise have entered into I would think the agreement had been misrepresented to her and I'd ask the business to take some action.

Mrs L says she was told the car had been on sale for much less time than she later discovered was the case. I'm not persuaded there is enough evidence to substantiate that claim as the dealership dispute Mrs L (and her husband's) assertion, and there's nothing in writing to support the claim Mrs L makes. And, even if I'm wrong about that, I don't think finding out the car had been on sale for a longer period would have been likely to mean that Mrs L wouldn't have proceeded with the deal. It didn't have any impact on the price, the vehicle specification, or the quality of the car, for instance.

Mrs L also says the car wasn't provided with the FSH it was advertised with. I think this is an important issue as I think the lack of a FSH would have been likely to affect the value of the car. And, as a timing belt change should have been completed when the car was ten years old any prospective customer would have been concerned that hadn't taken place as the implications could be serious if it snapped.

Mrs L has provided significant information and research to suggest some of the stamps in the logbook are fraudulent. Whether the dealership committed fraud is a matter for the police and isn't something I can decide. But, I don't think it's necessary for me to do that as I'm persuaded there is evidence the car wasn't provided with a FSH.

The logbook shows some errors. It's unclear whether services between 12 October 2015 and 10 July 2017 were A or B services and the service due at ten years appears to have been an A service as a note suggests it was an interim oil and filter change. At that point a full B service should have been completed and the timing belt should have been changed.

So, I think the car was misrepresented to Mrs L as it didn't have a full service history and I don't think Mrs L would have proceeded with the deal had she not been provided with that false statement of fact.

The usual remedy when goods are misrepresented is to put the consumer back in the situation they would have been in had the misrepresentation not have taken place. The dealer did suggest they'd take the car back and refund Mrs L her money but that wouldn't have put Mrs L in the same place as by then she'd paid for the full service that had been required.

In the circumstances I think the best solution would be for Virgin Money to refund the cost of the full service Mrs L had to pay for in October 2021. They'll need to add interest to that refund.

Distress and inconvenience

Our investigator suggested Virgin Money should pay Mrs L £100 in respect of the distress and inconvenience she's experienced. I don't think that's sufficient here. I've covered some of this when I considered the replacement of the tyres, but I think there has been additional

distress and inconvenience caused. Mrs L has explained that she's been extremely anxious about these issues and that it's impacted on her sleep and her eating. She's also explained that she's been tearful at times. The car was funded from money left to her and therefore had some sentimental value which I think would have heightened the distress she's experienced. Mrs L has also explained that she's been unable to tow her horse trailer at times because of the problems with the car and she's had to get issues fixed and research technical issues to support her case. Taking all of that into account I think Virgin Money should pay her £300 in respect of the additional distress and inconvenience caused.

My provisional decision

For the reasons I've given above I'm expecting to uphold this complaint and to tell Clydesdale Bank Plc to:

- *Refund the cost incurred by Mrs L to repair the door lock, replace the mis fuel tool, and replace all four tyres on provision of receipts. Add 8% simple interest per year from the date of payment to the date of settlement.*
- *Refund the cost of the full service on provision of the receipt and add 8% simple interest per year from the date of payment to the date of settlement.*
- *Pay Mrs L £300 to compensate her for the distress and inconvenience caused.*

It was subsequently brought to my attention by Mrs L that whilst I'd referred to refunding the cost of the diagnostic she'd commissioned I hadn't listed it in the redress. I therefore updated that redress to include the refund of the diagnostic and allowed a little time for Virgin Money to respond.

Mrs L accepted my provisional decision and although Virgin Money weren't persuaded by my rationale about the service history, they did note that the lack of information about a timing belt change strengthened the claim for misrepresentation, and they were prepared to accept my provisional 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've not been provided with any additional information that would lead me to change my provisional decision.

Putting things right

My provisional decision therefore becomes my final decision on this complaint.

My final decision

For the reasons I've given above I uphold this complaint and tell Clydesdale Bank Plc to:

- Refund the cost incurred by Mrs L to repair the door lock, replace the mis fuel tool, and replace all four tyres on provision of receipts. Add 8% simple interest per year from the date of payment to the date of settlement.
- Refund the cost of the full service on provision of the receipt and add 8% simple interest per year from the date of payment to the date of settlement.
- Refund the cost of the diagnostic Mrs L commissioned on provision of the receipt from Mrs L. Add 8% simple interest per year to that refund from the date of payment to the date of settlement.

- Pay Mrs L £300 to compensate her for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 31 January 2023.

Phillip McMahon
Ombudsman