

The complaint

Mr H complains that Clydesdale Bank Plc trading as Virgin Money ("Virgin Money") has treated him unfairly in relation to a complaint about a claim he made about a television he purchased using finance provided by it.

What happened

In March 2021 Mr H purchased a television from a third party retailer I will call "C". Mr H used an external sound device with his television. However, in March 2022 Mr H found that the sound device was no longer working with his television, therefore Mr H complained by phone to the manufacturer of his television who I will call "S".

S ran a diagnostic test with Mr H over the phone. S concluded there was nothing wrong with the performance of the television. Rather the problem was a compatibility issue with the sound device. On this basis S declined to provide any further help.

Mr H remained dissatisfied with the performance of the television, so he complained to Virgin Money, he made a claim against it for the full cost of the television. Virgin Money asked Mr H to get an expert's report. By this time as well as the sound problem the television screen was flickering. Mr H provided Virgin Money with a diagnostic report from a limited company I will call "T". This is what the report said about the faults and their cause:

"Diagnostic.

Not connecting to external sound devices, screen flickring (sic)

Causes

Faulty screen and mainboard."

Virgin Money decided that it did not have to take any responsibility for what had gone wrong for two reasons. It accepted S's conclusion that the issue with the external sound device was due to a compatibility issue. Moreover, by the time Mr H mentioned the screen flickering the television was outside of the manufacturer's warranty period. Therefore Virgin Money declined to take Mr H's claim against it any further. Mr H complained about this and about how long Virgin Money had taken to deal with things. Virgin Money declined to uphold Mr H's complaint.

Dissatisfied with Virgin Money's response Mr H complained to our service.

One of our investigators looked into Mr H's complaint. Our investigator did not agree that Virgin Money had acted incorrectly in relation to Mr H's complaint point about the quality of the television. But he did agree that Virgin Money had taken too long to deal with matters. Our investigator thought this likely caused Mr H distress and inconvenience and he recommended Virgin Money pay Mr H £50 for this.

Virgin Money accepted our investigator's recommendation, but Mr H did not. In summary, Mr H thought it was not possible for S to carry out a diagnostic test remotely. In any event he thought S's report was contradictory. Further, he pointed out that his sound device works perfectly in all circumstances other than when he tries to connect it to his television. Mr H thought we'd not placed sufficient weight on his version of events. Moreover, Mr H sent us information from the manufacturer of his external sound device. Mr H's told us that the manufacturer has confirmed the problem lies with the television.

Mr H asked that an ombudsman review his complaint.

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.

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. Rather, 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.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

Mr H complains about the quality of the television. Virgin Money did not sell the television to Mr H. In general, it is the retailer of goods who has responsibility for the quality of goods sold to a consumer. However, under relevant law, because of the type of finance Mr H used to purchase the television he potentially has a claim against Virgin Money for the quality of the television.

In this complaint, I consider relevant law to include the Consumer Credit Act 1974 ("CCA 1974") and the in particular Section 75 of that Act ("Section 75"), and the Consumer Rights Act 2015 ("CRA 2015").

The general effect of Section 75 is that if Mr H has a claim for misrepresentation or breach of contract against the supplier of the television (here that is C), he can also bring a like claim against Virgin Money provided certain conditions are met.

The CRA 2015 says that under a contract to supply goods, there is an implied term that "*the quality of the goods is satisfactory*". And if they are not then this is a breach of contract.

It follows that If I find that the television was not of satisfactory quality when supplied, this would be a breach of contract which I could hold Virgin Money responsible for, on a fair and reasonable basis.

Mr H suggests the television was not of satisfactory quality. Virgin Money suggests that it was. So the parties are miles apart about this fundamental point. 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 H reported the problem with using the sound device first and then the screen flickering afterwards. It seems Virgin Money accepts both problems exist in the sense that it accepts that the sound device does not work with the television and that the screen is flickering. But Virgin Money also says that the sound device issue is a compatibility issue not a fault with the television.

However, even if Virgin Money accepted that both of the issues were faults with the television (which it does not) that would not get Mr H any further, I say this because the mere presence of a fault is not sufficient to establish a breach of contract. Rather, it is necessary to show that the defects that led to the performance issues are inherent faults. In other words, I have to be satisfied that the performance issues are the result of defects and that those defects were present at the time the goods were supplied. The difficulty for Mr H is

that this test has not been met. I say this for several individual reasons which I'll go through below:

The first problem arose it seems some twelve months after the purchase. Then the second problem became apparent some months after this. If these defects had been present from the time the television was supplied I would have expected them to have become apparent much sooner.

The report from "T" does not assist Mr H's complaint. It merely says what problems exist now and what the cause is. But the report does not say that most likely the faults with the screen and the mainboard were present at the time the television was supplied. Moreover the report which I find lacks necessary detail does not explain why T thinks the problems are caused by a faulty screen and mainboard. Moreover, I have difficulty accepting the report as impartial as T appears to anticipate doing the repair work itself.

The external sound device may work in all instances when not connected to the television. That may be so. As I understand it S is not saying the external sound device is faulty in general it merely says that particular device has a compatibility issue with the television which is a different point. So the fact that the external sound device works in all other instances does not demonstrate that the television is not of satisfactory quality.

S is the expert, I think it is more likely than Mr H to know whether it can carry out a diagnostic test remotely. Further, Mr H does not say why the remote diagnostic test is unreliable in this instance. Rather he appears to be suggesting, without backing this up, that a remote test can never be sufficient. I'm not persuaded by what Mr H has to say about this.

Mr H tells us that the report from S is contradictory. But I've not found it to be so.

I've looked at what the manufacturer of the external sound device has said. It provided technical information about how the external sound device works. But it does not say that the television is faulty. Neither does it say that these faults are likely to have been present from the time of supply. Therefore this information does not help Mr H's case.

For all of these individual reasons, I've no proper basis to conclude the television was not of satisfactory quality when supplied. Therefore it follows I find there has been no breach of contract. It also follows I've no proper basis for saying that Virgin Money must take any further action in relation to this part of the complaint.

I note Virgin Money has offered Mr H £50 for distress and inconvenience and it appears he has accepted this. So I don't need to look at this part of the complaint any further. However, if I am mistaken and Mr H has not accepted the £50, in the circumstances, if Virgin Money had not already offered to make a payment for this, I would not have ordered it to make any payment at all.

My final decision

My final decision is that Clydesdale Bank Plc trading as Virgin Money must pay Mr H £50 for distress and inconvenience as it has already agreed to do.

Clydesdale Bank Plc trading as Virgin Money must pay the compensation within 28 days of the date on which we tell it Mr H accepts my final decision. If it pays later than this it must also pay interest on the £50 from the deadline date for settlement to the date of payment at the rate of 8% a year simple.

If it considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so that Mr H can reclaim the tax if he is able to.

Mr H should refer back to Virgin Money if he is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or

reject my decision before 21 August 2023.

Joyce Gordon
Ombudsman