

## **The complaint**

Mr H complains Clydesdale Bank Plc, trading as Virgin Money, has not met its obligations in regard to a transaction made on his debit card to purchase mobile phones.

## **What happened**

In July 2022 Mr H used his debit card to purchase mobile phones on a website which acts as a marketplace for buyers and sellers to interact. He paid over £9000 for these phones. He received the phones but decided to return them and has a delivery confirmation from the courier he used showing delivery to a location in America. Mr H has provided evidence from the website saying that on 06 August 2022 that it had received the returned item but hadn't processed it. He's also provided evidence from the website saying on 29 August 2022 that it hadn't received the item. Mr H says he's not been able to get a refund from the website. So he says he took his dispute to Virgin promptly.

Mr H says he tried to contact Virgin repeatedly but couldn't get through. He says he wrote to Virgin and has produced postal evidence of his letter being delivered to a Virgin address within 120 days of the transaction date of the purchase of the phones. Virgin says it doesn't have record of receiving that letter. It also says it has no record of receiving Mr H's dispute until well after 120 days from the transaction date of buying the phones. So it says Mr H was out of time for it to raise the chargeback on his behalf. It also says, in any event, even if it had received the evidence from Mr H in time, it is likely that such a chargeback would have been unsuccessful. So when Mr H complained to it, it decided not to refund him for the phones which says he'd returned, but it offered £40 for its customer service. So as Mr H remained unhappy with this he brought his complaint to this service.

Our Investigator considered the matter and felt that Virgin hadn't treated Mr H fairly. So she asked Virgin to refund Mr H the cost of the phones and pay a total of £150 for the distress and inconvenience it had caused. But Virgin didn't agree so this decision came to me to decide.

In December 2023 I issued a provisional decision on the matter, summarising that had Virgin raised a chargeback in time it didn't have a reasonable prospect of success. I did think Virgin should pay Mr H £100 to reflect the customer service it had provided.

Mr H responded with a significant amount of argument and evidence. Virgin had nothing substantial to add.

## **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.

Mr H has supplied a significant amount of arguments and evidence here. And accordingly some of my arguments on the matter have also changed but not my overall outcome nor the fundamental rationale to my position. I have a substantial amount of sympathy for Mr H here as he has gone to some lengths to return these phones properly. Similarly he has gone to

some lengths to raise the matter with Virgin properly. There is no debate about the effort Mr H has gone to. And I shall address his key arguments and evidence as I see them. And I thank him for his input and evidence. But the key positions I've taken on this matter remain from my provisional decision to this final decision as I'll now set out.

For Mr H to be successful I have to be satisfied of two things in order to make Virgin pay Mr H an amount equivalent to the cost of the phones. Firstly that Virgin have treated him unfairly and secondly had it treated him fairly, he'd have recovered the cost of the phones through the chargeback process. Only if I can conclude on balance of probabilities both of those tests, would it be fair for me to order Virgin to refund Mr H the costs of the phones. And I'm not persuaded those two tests are met in this case.

I'm sorry to hear about the health issues suffered here by Mr H. And I've considered this throughout my consideration of this case.

Both parties accept that Mr H used his Virgin debit card to pay for the phones and Mr H makes clear he received the phones and that he sought to return them in order to receive a full refund of the cost of the phones. It is also Virgin's position it didn't raise a chargeback because when it first properly knew about this dispute it was already out of time to raise the chargeback with the website through the card scheme due to its time limit rules.

In certain circumstances, when a cardholder has a dispute about a transaction, as Mr H does here, Virgin can attempt to go through the chargeback process. Chargeback isn't a right, but rather is a voluntary and informal scheme, but this service does consider it good practice to raise a chargeback, if within the time limits and that there is a reasonable prospect of success in the raising of that chargeback. This service has significant knowledge and experience of these schemes including that here.

Furthermore within the card scheme rules which govern chargebacks there are time limits set out for when chargebacks can be raised by banks/card issuers. These are timed from dates such as the transaction date or date of delivery of service where applicable.

So for Mr H's complaint about Virgin to be successful and for me to decide it would be fair for Virgin to compensate Mr H for the full value of the phones, I need to be satisfied that Mr H did raise the dispute with Virgin properly, and in time, and that had Virgin raised a chargeback with the website on balance of probabilities it would have been successful. And by not doing so, Mr H has thus lost out on the refund he should have got through the chargeback process.

*If Virgin had received Mr H's dispute in time would a chargeback have been successful?*

This service does consider it good practice to raise chargebacks if in time and where there is a reasonable prospect of success. Chargebacks are a process where, very briefly such disputes are raised, and the merchant can then either accept it or repudiate the chargeback by providing a defence. The bank can then counter that defence and so on and so forth until ultimately the card scheme decides on the dispute. So it is important to understand it can be the case that the bank takes the process right to its end and the card scheme decides against the cardholder and in favour of the merchant and that is out of the control of the card provider/bank. It is also important to understand that in the process the bank can stop going through the process of the chargeback if at any point it feels there is no longer a reasonable prospect of success.

Here, having considered the website's terms and conditions, it is clear it isn't a party to the contract of sale here. It makes very clear it provides services to both buyer and seller through its contracts with the parties, but it isn't party to the contract of sale, in this instance

for the purchase of the phones as it is neither buyer nor seller. Mr H points to his order confirmation and other evidence to say the website is the seller of the phones. I disagree substantially with this interpretation of the facts. This evidence Mr H points to shows the seller to be "(website brand name) Export Sales LLC" and Mr H's bank statement shows he paid "(website brand name) Mktp US\*". It is clear that the website and the seller are within the same group of companies. But they are very clearly not the same legal entity. Mr H argues that they're 'one and the same'. But clearly they are different legal entities with differing roles, on the one hand the quoted company sells/exports items and on the other who he paid (the website) is the marketplace entity which provides the service of the website and introducing buyers and sellers. This may appear a moot point to Mr H (and indeed consumers at large), but it is significant here as it is clear had Virgin raised an 'in time' chargeback the seller of the phones was a different entity to the merchant of record. And it would be the merchant of record that receives and responds to any chargeback not the seller. And these entities had different responsibilities in relation to such a chargeback. The reality of the legal position here is more complex than Mr H argues. Mr H is clearly invested in this point, nevertheless the evidence is clear to me of this important distinction which is important in this dispute. And it's possible that this differential between parties could explain why Mr H has been unsuccessful in getting his money back from them since his dispute began.

Here Mr H has provided evidence of the website saying it had received the returned item and also it later saying it hadn't received the returned item (the phones). Mr H hasn't provided the website's final response to him in relation to this dispute. And Mr H has said to this service in response to my provisional decision that "*they're (the website) clearly not going to respond to me*". This is important because had Virgin raised an 'in time' chargeback it could be successful through either the website not defending the chargeback, it accepting the chargeback and choosing to refund the phones' cost or the card scheme finding in Mr H's favour (had Virgin pursued the matter to the final stage of the chargeback). Bearing in mind the website's refusal to refund Mr H so far, and his position that it is no longer engaging with him meaningfully, I'm not persuaded there is persuasive evidence to show had a chargeback been raised it was likely that the website would refund Mr H through that process or that he'd have received his money back in the manners described. And the website's refusal to refund Mr H could be because it doesn't accept it received the returned phones, as that would seem to be the most obvious reason for its stance of refusing to refund Mr H's payment to it.

Mr H has made significant argument about where he returned the phones to. I've considered this and reconsidered the applicable terms. In conclusion I'm satisfied that Mr H did provide the courier service with an address to return the phones to in line with the returns process. And as I've said I've every sympathy with Mr H's attempts to send the phones and correspondence to the correct places. Nevertheless it is clear the website as the merchant of record has refused to refund him and has provided contradictory and vague information about the status of the returned phones and their location and whether it has accepted it received the phones.

It is clear from Mr H's screenshot of his phone that he initiated the returns process with the website. And that the courier received an address in line with the returns process. But as the website refuses to refund Mr H the cost of the phones having apparently accepted he can return them, I'm not going to speculate about what happened between Mr H sending these high value phones and the website not formally and persuasively acknowledging receipt of them, other than to suggest that there are other possibilities such as intervening events which may have led to the website not receiving them such as the phone's loss or being stolen. It is also possible that the evidence of delivery isn't wholly reliable. Albeit I accept there is no evidence of these possibilities either. In short it is not clear what exactly happened between the delivery service receiving the phones, saying it delivered them and

the website issuing contradictory information as to whether it properly received them or not. Mr H argues it's obvious that the website lost them after receiving them. I've not seen persuasive evidence of this such as the website coming to that conclusion or other persuasive evidence of such.

*Did Mr H raise the dispute in time?*

Mr H has provided evidence of delivery to an address in Scotland of his complaint letter to Virgin. This evidence shows the date of delivery which would have been within the time limits of the chargeback process and is to a Virgin location. Virgin says it has no record of receiving this. And it says that once it was aware of the dispute Mr H has with the website, it was out of time for a chargeback to be raised. Ultimately evidence from a delivery service of delivery to a location is not the same thing as evidence of Virgin accepting it received it and has it. So I'm not necessarily persuaded Mr H's evidence of apparent delivery shows that Virgin received and lost his submissions on the subject as he suggests. And for the reasons given already I'm not persuaded that even if Virgin had received it, a chargeback would on balance meant he'd have received the funds he seeks.

I should also add that this Chargeback scheme (and the other schemes generally) have limited dispute reasons to be raised with merchants and limited defences also. Such schemes are not meant to cover every possible type of dispute between card holders and merchants. They are in essence an informal dispute resolution service and as I've described they are voluntary. Having considered the dispute reasons codes here I'm not persuaded Mr H has lost out because of what Virgin did here. I say this because there isn't a dispute code for this type of situation where there is a dispute over the facts of the case-specifically whether or not the website received the phones back or not. So even if Virgin received Mr H's letter in time it is clear that none of the chargeback codes neatly fit this situation. And this could have been a further reason that had Virgin received Mr H's documentation (which it says it didn't) it could have reasonably concluded that none of the chargeback codes available would have had a reasonable prospect of success considering the unusual facts of the matter here.

*Customer service*

I note that Virgin in responding to the investigator's assessment didn't seek to defend the customer service provided. In response to my provisional decision it has said it made the offer based solely on what Mr H has said. I do think Virgin's offer of £40 doesn't sufficiently correlate to Mr H's experiences here. I think the evidence of the webchats shows Mr H has made a number of attempts to deal with Virgin and is supportive of him having been on hold for extended periods of time. And I can see in those webchats evidence of Mr H being increasingly disgruntled with the customer service received and I can understand why from the evidence overall. Mr H noted in his response to my provisional decision that my award here was less than what the investigator decided. This is true but it is clear the vast majority of Mr H's displeasure in this whole affair is with not getting the cost of the phones back rather than the nature of some the customer service Virgin provided. And I think the Investigator's position was unfair. So I think a total of £100 for the distress and inconvenience caused is a fair sum for Virgin to pay Mr H and a better reflection of the unsatisfactory customer experience here.

I appreciate this is a decision Mr H will not welcome and is unlikely to accept. And I note the effort he's gone to, and evidence submitted in response to my provisional decision. He is free to continue his dispute with the website through any available avenue. And as I've said I've considerable sympathy for him bearing in mind the lengths he's gone to and evidence he's provided of such lengths of evidencing where the phones and letter to Virgin were sent. Nevertheless just because he's lost out doesn't make it fair for Virgin to compensate him the

cost of the phones. And it is clear to me that the evidence available doesn't demonstrate on balance that Virgin should refund him the cost of the phones for the variety of reasons given.

I'm not persuaded Virgin's position of not receiving Mr H's dispute information in time is erroneous. And in any event had it received it, I think Virgin could have decided fairly not to raise a chargeback considering the circumstances and dispute codes. And I think that had Virgin chosen to raise a chargeback with the information available in time, I think it didn't have a reasonable prospect of success due to the nature of the chargeback codes available and the circumstances and evidence in this dispute between Mr H and the website.

### **Putting things right**

So I don't think Virgin should refund Mr H the cost of the phones. I think it should pay him £100 for the customer service delivered.

### **My final decision**

I uphold this complaint against Clydesdale Bank Plc, trading as Virgin Money and direct it to pay Mr H a total of £100 including any payment already made. It doesn't have to do anything else in this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 11 March 2024.

Rod Glyn-Thomas  
**Ombudsman**