

The complaint

Ms H complains that Clydesdale Bank Plc trading as Virgin Money, hasn't considered her claim to it about a kitchen supply fairly.

What happened

During July and August 2022 Ms H contracted with a kitchen supplier ('the Supplier') for a new kitchen. This purchase was financed via a number of card transactions including on Ms H's Clydesdale Bank Plc trading as Virgin Money ('Virgin' for short) credit card. On delivery Ms H said what had been delivered wasn't the kitchen she wanted. After considerable back and forth between Ms H and the supplier, the supplier made an offer (as a gesture of goodwill) to replace some doors with different doors in line with what Ms H said she wanted. After further discussion and disagreement about the offer made, it never came to fruition. So Ms H took her dispute to Virgin.

Virgin concluded that there was no evidence of a breach of contract and that the offer made by the supplier was fair. Ms H wasn't happy with this so she brought her complaint to this service. Our investigator looked into the matter. Overall, she felt that Virgin had fairly treated Ms H. Ms H didn't agree. So the complaint has been passed to me to decide.

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 should make very clear that this decision is not about the Supplier who sold the kitchen which isn't a financial services provider and doesn't fall within my remit regarding Section 75. Ms H has made few arguments about how Virgin treated her claim unfairly, but rather focussed her displeasure at the supplier and saying she didn't get the kitchen she ordered. Whatever the issues there maybe with the Supplier here, and just because Ms H says she has lost out, it doesn't necessarily follow that Virgin has treated Ms H unfairly or that it should refund her. And this decision is solely about how Virgin treated Ms H. I hope this key distinction is clear.

I must also say that during the course of this dispute there has been a huge amount of evidence and argument submitted in these matters. I've considered it all. However in the interests of clarity and brevity I will only address the key issues here as I see them in line with our approach of an informal dispute resolution service.

I should also note that within what has happened here there is clearly significant evidence of the parties being at cross purposes and that clearly all parties are now somewhat invested and or entrenched in their positions. I'm also aware that Ms H has made representations that this entire dispute has been hugely distressing for her and been of substantial inconvenience to her household. I am sorry to hear this and I've kept this important information at the forefront of my thinking throughout. I shall now set out the relevant law and my analysis of the evidence available on this matter.

The CCA

The CCA introduced a regime of connected lender liability under S75 that afforded consumers (“debtors”) a right of recourse against lenders (“creditors”) that provide the finance for the acquisition of goods or services from a third-party merchant (the “merchant”). S75 says:

“If the debtor under a debtor-creditor-merchant agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the merchant in respect of a misrepresentation or breach of contract, she shall have a like claim against the creditor, who, with the merchant, shall accordingly be jointly and severally liable to the debtor.”

So the test is here, did Virgin consider Ms H's S75 claim to it fairly, or in other words are the pre-requisites of the CCA in place (financial limits and Debtor Creditor Supplier arrangement) and is there a breach of contract or material misrepresentation made out against the supplier that Virgin should fairly be held responsible for. And if there is a remedy available whether that remedy is fair. I'm satisfied the financial limits test is made out here as well as the arrangement requirement. I should add that as this is a 'like claim' Virgin are required to consider the claim made to it fairly, but importantly there is also an onus on Ms H to make out her claim to Virgin as she would have to against the Supplier directly, for example if she were going to take the Supplier to court. This doesn't mean she has to use solicitors to make a claim to Virgin or submit documents in a certain way or in formal legal pleadings. But it does mean she needs to show on balance of probabilities that there was a breach of contract or misrepresentation through the arguments she makes and the evidence she provides.

Was the kitchen that Ms H received the kitchen she ordered?

The origin of this dispute was that Ms H had seen a style of kitchen supplied by a third party which I'll call Firm S. She then approached the Supplier here to see if it could design her a kitchen and supply it itself but using materials from Firm S. Ms H says she wanted a specific kitchen that was in essence mainly anthracite (very dark grey/black), with some grey panels with copper trims. For ease I'll refer to this as the 'Black Kitchen' as I've seen pictures of this type of kitchen and it is what I'd describe as predominantly black. Ms H received what I'll refer to as the 'Grey Kitchen' as its significantly different to the Black Kitchen. I'll also note here Ms H has significant concerns about the constituent bits of the Grey Kitchen and I'll return to that point later.

I can see that at the very beginning of this design process Ms H emailed the pictures I've seen to the Supplier in July 2022 of the Black Kitchen. The Supplier also had a quote from another party which Ms H wanted the Supplier to quote on supplying 'like for like.' Either that day (28 July) or the following day (29 July) there was a discussion between the Supplier and Ms H about the plans for the kitchen. There is no record of this conversation but it is mentioned in the email accompanying the quote that the Supplier sent to Ms H on 29 July which it had put together as a result of the request for a 'like for like' quote and discussion and email correspondence. From then onwards there is a significant amount of email correspondence discussing various facets of the kitchen to be delivered.

Once the kitchen is delivered and Ms H says she realised that she'd received not what she wanted there then follows further substantial email correspondence about this dispute. On the 22 September, the Supplier summarises the important documents between them as:

- A costing for a like for like quotation for the Grey Kitchen
- The Supplier's costing for the Grey Kitchen

- The Supplier's Contract which clearly states it's for the Grey Kitchen
- The Supplier's Plan & Images which show the '800 unit' for the Vented hob extraction and also that it's for the Grey Kitchen.

The Supplier goes on to say that he can't see the Black Kitchen being agreed or even any significant reference to it being considered throughout the ordering process. I've reviewed quotes from the supplier to Ms H dated 29 July, 3 August, and 10 August none of which refer to the Kitchen being the Black Kitchen and all of them referring to delivery of the Grey Kitchen.

I also note that although Ms H has made many significant and substantial submissions to both this service and Virgin she does not contend this key argument of the supplier's, namely that the paperwork over an extended period of time (prior to the supply of the kitchen and which was supplied to Ms H by the Supplier) shows her getting the Grey Kitchen and thus clearly not getting the Black Kitchen.

Accordingly I'm not persuaded Virgin has acted unfairly here. The contemporaneous evidence shows significantly that over weeks Ms H was repeatedly given documentation showing that she and the supplier were agreeing for the supplier to supply the Grey Kitchen, which it did supply. I appreciate right at the beginning Ms H sent the supplier a picture of the black kitchen. But either that day or the next day there was a discussion and the Supplier supplied a quote showing the Grey Kitchen. Ms H didn't dispute this important documentation or mention the issue of it being the Grey not black at any point. I note Ms H's comments about having a limit for how much she could spend on the kitchen and what she spent here was on that limit. I also note the Supplier's comments about the Black Kitchen being significantly more expensive than the Grey Kitchen. I think it likely in that conversation before the first quote was sent to Ms H there would have been some discussion of costs. And if Ms H's budget didn't cover the Black Kitchen cost it would seem logical that the Grey Kitchen would be selected as it was within Ms H's budget.

There was a full six weeks between first contact between the parties and delivery of the kitchen and during that time the supplier provided clear details of what it believed Ms H wanted and what it was to deliver to Ms H on a number of occasions (namely the Grey kitchen). So it is my position that Ms H has not demonstrated a breach of contract here. And thus Virgin has treated her fairly here. If the parties were talking at cross purposes here Ms H had plenty of opportunity and documentation from the supplier to see that this was the case. But she doesn't raise any issue until after delivery. As the supplier points out the reason it provides the documentation it does is to iron out any such possible issues or eliminate the risk of talking at crossed purposes and Ms H didn't do so when she had many opportunities to do so. I can also see that Ms H was clearly emailed such documentation showing the Grey Kitchen and she clearly received it because she responds to those emails. So it's clear she received that documentation and didn't challenge it. And as I've described she's never disputed getting such information. So from the significant amounts of documentary evidence from the time it could be the case she agreed to the Grey Kitchen on that call at the beginning of the matter and changed her mind at point of receipt. Or it's possible Ms H had forgotten she'd agreed to the Grey Kitchen and it only became clear at the point of delivery. However it's clear she asked for a 'like for like' quote from the Supplier and 'like for like' was for the Grey Kitchen. So I'm not persuaded Virgin have considered this matter unfairly.

I appreciate Ms H makes a number of comments about the Grey Kitchen and points to differing names of differing designs of kitchens similar to the Grey Kitchen and argues she didn't order some of the parts that were supplied to her either. However I've seen evidence from the manufacturer's that notes that the doors between its differing designs that Ms H has referred to are actually the same door in the same colour just with different design names for

marketing reasons. And that a number of its kitchen designs use interchangeable units and materials for pragmatic and marketing reasons. So I'm not persuaded Virgin has treated Ms H unfairly on this nomenclature point either as the parts are what she ordered but badged differently.

Latterly Ms H makes arguments around the quality of some of the items supplied. However it is also clear from what Ms H says that her installer had installed some of the kitchen and that some of the doors which had been installed were then taken down. I've considered the pictures provided which show door hinge areas and issues with the corners and edging of such parts of the kitchen delivered. Bearing in mind these pictures look like the items which Ms H's fitter would have worked with or around, I'm not persuaded that this demonstrates that these items were of unsatisfactory quality at the point of delivery considering the work her installer seems to have done.

I note here that during the protracted discussions between Ms H and the supplier once the kitchen had been supplied, that the Supplier in the early stages offered Ms H some replacements at cost price. Later it offered Ms H the Black Kitchen doors at no additional cost (which were usable here for the reasons as I've described). Ms H refused this offer. Bearing in mind the paperwork and evidence more broadly I'm not persuaded it was obliged to offer Ms H anything at all here. So I consider the offer made as being significant and that it would have gone a long way towards to delivering the Black Kitchen Ms H wanted and notably for less cost than that kitchen would have actually cost had she ordered that to start with. (I'm not persuaded about Ms H's arguments about costing here because she points to evidence from a similar kitchen advertised, but it's not the exact same kitchen and in any event the supplier is responsible for setting the price it charges for supplying the goods it supplies and can change these whenever it wishes). As Virgin is considering a 'like claim' here it is entitled to point to offers made by the supplier as part of its thinking. It's clear that the supplier made this offer as a gesture and that Ms H didn't accept it. So I certainly don't think Virgin has treated Ms H unfairly by declining the claim or pointing to this generous gesture by the supplier.

For the sake of completeness I'll cover some of Ms H's other arguments. She says one of the other banks whose credit was used to pay towards this kitchen has refunded her. This may be the case. However based on the evidence here I'm not persuaded Virgin has acted unfairly. And banks may pay out for a variety of reasons including commercial decisions, pragmatic dealing with such disputes or indeed potentially seeing different evidence or simply coming to a different outcome. This argument doesn't mean Virgin has acted unfairly on this matter.

Ms H points to Virgin taking what she considered a significant time to consider her claim. There is no time limit on considering S75 claims in the CCA. This service considers that firms should try to consider matters in a reasonable timeframe considering the particulars of the claim. Clearly here Virgin paid Ms H £50 for the time taken. I'm not persuaded it was unreasonably long considering the complexities of what has happened here and the payment already made on this issue addresses any delay here.

Ms H points to the supplier removing the offer of supplying the Black Kitchen "*when I asked for it to be the correct model of kitchen.*" I'm satisfied that the supplier supplied in line with the all the documentation it provided to Ms H during the ordering process. So I'm not persuaded Virgin has more to do in this regard.

Ms H points to one particular unit of materials supplied and says it was the wrong sizing. I've seen the supplier provided an explanation regarding this and that it had to supply that size in order for it to be properly installed bearing in mind the design of the kitchen and the need for flexibility around its installation around the working parts of the kitchen. I'm not persuaded

Ms H has lost out because of this because the Supplier's comments on the need for this unit to be delivered makes sense from an installation point of view. Accordingly I'm not persuaded Virgin has treated Ms H unfairly on this matter.

Ms H says the supplier didn't deal with the issues properly after she said she wanted the full kitchen replacing. I don't think Virgin has acted unfairly here because the contemporaneous evidence supports the position that the supplier hasn't breached the contract. Ultimately she asked for and received a 'like for like' quote as she asked and got that kitchen in line with the 'like for like' quote she asked for.

I do appreciate that this isn't the decision Ms H wants to read. And that it leaves her disappointed. And I appreciate the significant toll that this dispute has had on Ms H and her kitchen for an extended period of time. I'm sorry Ms H feels as she does about what happened here. But that doesn't make it fair for Virgin to do more here when the evidence shows the supplier provided what it said it would to Ms H throughout an extended period of time and during significant discussions between the parties during this time. So it is my decision that Ms H's complaint about Virgin is unsuccessful.

Naturally, Ms H may wish to continue this dispute through other processes with the supplier and has talked about using a solicitor to do this. In such disputes independent legal advice is sensible to my mind. However I think the evidence is clear and persuasive. This decision brings to an end this service's involvement in Ms H's complaint about Virgin regarding how it considered this s75 claim.

My final decision

For the reasons set out above, I do not uphold the complaint against Clydesdale Bank Plc trading as Virgin Money. It has nothing further to do on this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 1 November 2024.

Rod Glyn-Thomas
Ombudsman