

The complaint

Mr Y complains that Clydesdale Bank Plc trading as Virgin Money ("Virgin Money") hasn't refunded him for works he says were carried out incorrectly to his car by a garage.

What happened

In April 2022, Mr Y used his Virgin Money credit card to pay £7,304.26 to a garage (who I'll call 'B') to supply and fit a turbo kit to his car. In July 2022, Mr Y noticed the car's engine appeared to be faulty although it was still driveable. He took the car to a mechanic who told him the turbo had caused the engine to malfunction.

Mr Y says he took the car to a repair garage but by December 2022, they hadn't looked at the car. He contacted B but says they ignored his calls and e-mails.

Mr Y then raised a claim under section 75 of the Consumer Credit Act 1974 (s.75) with Virgin Money. He says Virgin Money told him to ask B to collect the turbo kit and to refund him the money he'd paid, and if they didn't do so, Virgin Money would refund him. Mr Y didn't get anywhere with B and was then told by Virgin Money that they needed to investigate the matter.

Virgin Money sent Mr Y a letter in May 2023 saying they had declined his s.75 claim. In summary, they felt that there was no evidence that B had breached the contract because they had seen an independent report which said the issues with the car had been caused by oil starvation. Virgin Money then rejected Mr Y's complaint about the outcome of the claim.

Mr Y didn't agree and referred his complaint to our service. One of our investigators looked into what happened but didn't recommend that Virgin Money do anything.

Mr Y asked for an ombudsman to look at 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.

I want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I want to assure Mr Y and Virgin Money that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Mr Y used a regulated credit card agreement to pay B to carry out the agreed works to his car. Our service can consider complaints relating to these sorts of agreements.

I've taken into account relevant law which in this case is s.75. In effect, this makes Virgin Money equally liable for a breach of contract or misrepresentation by B. I'm satisfied that the necessary criteria for Mr Y to make a s.75 claim were met.

The Consumer Rights Act 2015 (CRA) is relevant to this complaint. The CRA implied terms into the contract between Mr Y and B that services supplied will be carried out with reasonable care and skill. I mention this because the contention from Mr Y is that B didn't properly fit the turbo kit to his car and that the contents of an independent report confirm this.

I've looked at this report which was completed in early 2023. I've included relevant extracts of this below.

'After an initial inspection it was found that the noise was originating from the lower part of the engine (engine block) the customer was then advised that we would need to remove the oil sump pan to confirm where the noise was coming from.

On draining the engine oil into a measuring container we found that it was very low on oil only having approx 2 litres of the 4.5 that is (sic) should have, on removing the oil sump pan we found small pieces of swarf leading us to believe that one or more of the connecting rod bearings had failed due to oil starvation. With the connecting rod caps removed cylinder one con rod bearing was found to be very badly damaged also causing significant damage to the crankshaft.

We believe the damage to be caused by oil starvation.....the engine has had an after market turbo kit fitted which required the oil sump pan to be drilled and a threaded union fitted for the oil return pipe from the turbo. The engine oil that we drained from the sump was put back in the sump once we had removed it and it reached the level of the threaded union fitted for the turbo kit, we suspect that the sump was not removed to fit the union and the hole was drilled while the engine oil was still in the engine resulting in the engine oil draining to the level of the drilled hole and not being refilled once the work was complete thus causing the engine damage'.

I'm sorry to disappoint Mr Y but I don't think the contents of this report is enough to show me that on balance B fitted the turbo kit without reasonable care and skill. I say this because the report only mentions that the garage suspects that the work wasn't carried out as it should have been. I would have liked rather more certainty that B didn't carry out the work correctly and appropriately. It's possible for example that the oil drained to the point of starvation because the car's oil level dropped as would be expected from Mr Y's use of it. I note also that the manufacturer of the car says on its website that oil consumption for this make and model can be as high as 1 litre every 800 miles.

Overall, I haven't seen sufficient evidence of a breach of contract for which Virgin Money would be liable under s.75. So, I don't have the grounds to direct them to reimburse Mr Y for what went wrong. I note that Virgin Money offered £50 to Mr Y for the way they handled his claim. As I don't think they were ultimately wrong to decline the claim for the reasons I've given above, I won't be directing them to increase this amount.

It doesn't appear that Virgin Money raised a chargeback to try to reclaim the money. However, it seems that Mr Y asked for the cost of the turbo kit to be refunded as well as the likely cost to fix the car. Chargeback doesn't though cover consequential losses in the way that a s.75 claim can and so it was appropriate in my view for Virgin Money to have considered the matter under a claim for s.75.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 27 December 2024.

Daniel Picken
Ombudsman