DRN-4980269

The complaint

Mr R complains Clydesdale Bank Plc trading as Virgin Money ("VM") has failed to honour a claim he brought under section 75 of the Consumer Credit Act 1974 ("CCA").

What happened

I issued a provisional decision on Mr R's complaint on 24 July 2024, a copy of which is appended to, and forms a part of, this final decision. My provisional decision outlined the background to the complaint, and my provisional findings, in some detail, so it's not necessary for me to go over these again, except briefly. In summary:

- Mr R purchased a used car which was approximately four years old with 25,000 miles on the odometer, in June 2022. He used his VM credit card to pay a small part of the purchase price of £27,850. During the pre-purchase negotiations with the car dealer, Mr R asked if any work had been carried out on the car, and the dealer replied that the wheels had been refurbished.

- Mr R took the car to an automotive detailer shortly after purchase, and the detailer reported that the car's paintwork had been repaired to a poor standard on the offside rear door and rear quarter. It then came to light that the dealership had, in addition to refurbishing the wheels, carried out the poor repairs in question.

- Complaints were made to the dealership, and the relationship subsequently broke down between Mr R and dealership without any agreement being reached on what should be done. Mr R subsequently contacted VM for help in early August 2022.

- VM initially attempted a chargeback on the £200 deposit which Mr R had paid on his credit card, late in October 2022. This was opposed by the dealership, and this process had failed to recover any money for Mr R by 19 January 2023. VM then considered whether it had any liability to Mr R under section 75 of the CCA. It decided that it had no such liability. When Mr R complained, it paid him £70 compensation in respect of delays in responding to his claim, but otherwise stood by its decision.

- In my provisional decision I noted that section 75 of the CCA would allow Mr R to hold VM liable for any breach of contract or misrepresentation by the dealership, in connection with the sale of the car.

- I concluded the dealer had impliedly represented that the only work it had done on the car was refurbishing the wheels. This was not true and Mr R had relied on this false statement when going ahead with the purchase. I also concluded the dealer was in breach of contract because it had not carried out the paintwork repairs to a reasonable standard, leaving the car in an unsatisfactory state when it was sold to Mr R.

- I noted Mr R said he had paid his detailer to correct the poor paintwork repairs to an acceptable visual standard. I thought the cost of this work would represent fair

redress in the circumstances, but Mr R had been unable to demonstrate how much it had cost, as the invoice he had provided was non itemised and included other work carried out on the car which was unrelated to the areas affected by the dealership's poor quality repairs.

- I said I was minded to make no award to Mr R in respect of the section 75 claim, unless he was able to demonstrate how much the remedial work on the offside rear door and rear quarter panel had cost specifically. I said that if he was able to provide such evidence then I would make an award in respect of this in my final decision.

- I considered VM's compensation of £70 had not fairly reflected the impact of the delays in its claims handling on Mr R. The claim had been brought in early August 2022 but was not responded to until April 2023. It had not been a straightforward claim, but there had been avoidable errors by VM which had contributed to the delays, such as putting the section 75 claim on hold while attempting a chargeback, when this wasn't an appropriate method for obtaining redress. Mr R had needed to chase for updates on multiple occasions, and I thought it was evident this had caused frustration. I said I was minded that a total of £150 compensation was more appropriate.

I invited the parties to the complaint to provide further submissions following my provisional decision. Both VM and Mr R responded.

VM said it accepted my findings regarding the section 75 claim, but didn't think it was fair to increase the compensation. It thought the matter was subjective, and commented that it was ironic that I had seen fit to increase the compensation for delays when it considered the Financial Ombudsman Service had been responsible for significant delays in Mr R's case. It said it would nonetheless agree to pay further compensation.

Mr R responded to the provisional decision with a revised invoice from his detailer, along with a receipt showing how much he had paid the detailer in total. I'll analyse this later in this decision. The case has now been returned to me to review.

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.

It appears that both parties accepted my provisional findings regarding the section 75 claim in principle (or at least if they disagree, they haven't said why), so I don't need to say anything further on this point other than that my findings and conclusions are unchanged on this point from my provisional decision.

I said in the provisional decision that if Mr R was able to show how much he had paid to his detailer to correct the paintwork to the offside rear door and rear quarter, then I would include an award for this in my final decision. That brings me to the matter of Mr R's invoice and receipt.

I've no reason to believe the documents Mr R has produced are not genuine. The receipt shows that he paid the detailer £750, and the invoice provides the following breakdown:

- Rectification of poor refinishing work to offside rear quarter panel, offside front door, offside rear door, removal of overspray from remainder of vehicle using claybar - £550.

- Machine polish remainder of vehicle to remove marring from claybar process - £100

- 2 stage ceramic coating with Futureproof+ - £100

Mr R had said previously that he had paid his detailer £550 extra to correct the poor repairs carried out by the dealership. I would observe that the line item on the revised invoice which is for this amount, includes correction of the paint on the offside *front* door, which was not part of the dealership's poor repairs. It also includes clay-barring the vehicle, which is the sort of process I might have expected to be undertaken in any event (along with machine polishing) to prepare a vehicle for the kind of ceramic coating Mr R was having applied. That said, it doesn't seem unreasonable that some degree of clay-barring was necessary to remove overspray, which was one of the problems identified with the dealership's previous repairs.

Having considered the invoice, I think it would be fair and reasonable, bearing in mind what I said in my provisional decision, to make an award of £412.50. I've arrived at this figure by dividing the amount of £550 by the four elements which make up the line item on the invoice, and multiplying by the three elements I think were reasonably necessary to correct the dealership's poor repairs. In other words, I've excluded the work to the offside front door. I think this would be the amount it would be fair and reasonable for VM to offer to settle the section 75 claim.

The only other comments I've received on my provisional decision were from VM, around the question of compensation for Mr R's non-financial loss (inconvenience, frustration etc.) caused by the way in which VM handled his claim.

Regarding VM's comments on delays caused by the Financial Ombudsman Service, I would say simply that this is a separate issue, unrelated to any delays on VM's part, and that it is open to either party to make a complaint to the Financial Ombudsman Service if they consider it has been responsible for delays.

Returning to the matter of VM's delays, I remain of the view that these were not insignificant and could have been avoided had VM not pursued a chargeback when this wasn't really an appropriate means of obtaining redress in a case like this (where only a small deposit had been paid on the card). The impact was compounded by VM's decision to put the section 75 claim on hold while it went through the chargeback process, rather than running both claims simultaneously.

While I appreciate VM's point that there is a subjective element to compensation, I've been guided by the guidelines on our website,[1] and I consider this scenario falls into the £100 to £300 band, as what happened was not a small administrative error or short delay. I remain of the view that £150 compensation is fair in the circumstances and recognises the impact of VM's claims handling on Mr R.

My final decision

For the reasons explained above, and in my appended provisional decision, I uphold Mr R's complaint and direct Clydesdale Bank Plc to take the following actions:

- Pay Mr R £412.50, this being the amount I think it would be fair and reasonable of it to offer to settle the section 75 claim.

[1] https://www.financial-ombudsman.org.uk/consumers/expect/compensation-for-distress-or-inconvenience

- Pay Mr R £150 as compensation for the impact of its poor claims handling, to the extent it hasn't already done so (e.g. if it has already paid him £70 then it needs to pay £80 more).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 19 September 2024.

Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at slightly different conclusions to our investigator, and for different reasons, so I need to give both parties to the complaint an opportunity to provide further submissions before I make my decision final.

I'll look at any more comments and evidence that I get before 7 August 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

Mr R complains Clydesdale Bank Plc trading as Virgin Money ("VM") has failed to honour a claim he brought under section 75 of the Consumer Credit Act 1974 ("CCA").

What happened

Mr R entered into discussions to buy a 2018 BMW 4 series with about 25,400 miles on the odometer, from an independent dealership far from his home, early in June 2022. He paid £200 towards the vehicle on 3 June 2022 on his VM credit card, and paid the remainder of the price on 10 June 2022, having negotiated the price down to £27,850 following a viewing in which he had pointed out some cosmetic problems with the paintwork. The car had originally been advertised at £29,995, meaning the discount came to £2,145.

Mr R says he purchased the vehicle as a result of misrepresentations made to him by the dealership. Specifically, he says he asked if the vehicle had had any work carried out on it, and was informed that the wheels had been refurbished. However, when Mr R took the car to his detailer, the detailer told him the car had been poorly resprayed in places. Mr R complained to the dealership and it subsequently came to light that the dealership had arranged for the offside rear door and rear quarter to be resprayed prior to Mr R entering discussions to buy the car.

In addition to believing he had been deceived, Mr R considered the poor quality respray meant the vehicle did not meet a satisfactory quality standard. He complained to the dealership, who responded that he'd already been given a discount so he could "correct and sort anything you were not happy with", and that he'd agreed to purchase the car as it was. The dealer said their bodyshop would however be happy to take the car back and look at revisiting the resprayed areas. Mr R said he didn't trust the bodyshop to do a good job and he would take the car to a trusted garage for the necessary repair work.

Relations broke down between Mr R and the dealership, and ultimately the dealership's final position remained that Mr R had seen the car before buying it, and had received a discount already in respect of its cosmetic issues.

Mr R approached VM for assistance on 8 or 9 August 2022. It appears VM initially told Mr R on 23 August 2022 that it would be considering a claim under section 75 of the CCA, but subsequently attempted a "chargeback" instead, to try to reclaim the £200 deposit from the dealership, on 28 October 2022.

The chargeback was firmly opposed by the dealership, who rejected the attempt on 10 November 2022. VM escalated the chargeback to a stage called "pre-arbitration" about two weeks later. By latest 19 January 2023 VM had received another negative response from the

dealership and decided to take no further action with respect to the chargeback, and to focus on Mr R's section 75 claim instead.

On 25 April 2023 VM declined the section 75 claim. This prompted a complaint from Mr R. VM stood by its position but acknowledged that it had taken too long to respond to the claim, paying Mr R £70 compensation in respect of this.

Dissatisfied with this response, Mr R referred his complaint to the Financial Ombudsman Service for an independent assessment. One of our investigators looked into the matter. I could summarise the findings she made, in October 2023, as follows:

- VM had taken the chargeback as far as they reasonably could have.
- There was insufficient evidence that the car had been misrepresented, and Mr R may have decided to buy it anyway, had he known the truth.
- Mr R had physically viewed the car and had been satisfied with the price paid for the condition it was in. He had declined a reasonable offer from the dealership to put things right.
- Mr R hadn't had a valid claim against VM under section 75 and it therefore hadn't been wrong to decline this. The £70 compensation it had paid in respect of its delays in responding to the claim was fair and reasonable.

Mr R didn't agree with our investigator. I could perhaps summarise his key points as:

- The respray had rendered the car not satisfactory quality because it did not return the car to its previous condition or manufacturer paint tolerances.
- It wasn't reasonable to expect him to detect defects which were not visible to the naked eye.
- There was no basis for concluding he would still have bought the car, had it not been misrepresented.

Our investigator considered Mr R's points but her view remained unchanged. As no agreement could be reached, the case has been passed to me to decide. Mr R made a number of submissions prior to the case being passed to me. In summary, these were:

- The car was not satisfactory quality. The evidence he had produced clearly showed the dealership's repair/respray meant the car was outside of the manufacturer's paint quality standards. The dealer's offer to do the work again was evidence there was a problem. However, it hadn't been logical to return to the car to them for repairs because the report had showed the car couldn't be returned to its original condition.
- It had been falsely stated (knowingly or not) by the dealer that the car had only had a wheel refurbishment carried out prior to sale.
- The car should have been sold at a value which reflected the fact the car no longer met manufacturer paint standards. If the repair work had been disclosed at the point of sale (as requested) then he would have asked for more info or negotiated a further discount.
- The discount he had negotiated was for visual cosmetic issues like scratches and stone chips, not for the hidden (and poor) repairs. He got a discount so he could go

and get these visible issues fixed by an independent third party – who subsequently alerted him to the invisible problems.

I requested further information from Mr R prior to writing this provisional decision. I asked if his detailer had corrected the defects which had been identified with the paintwork, and, if yes, could he evidence how much this had cost over and above works he had intended to carry out anyway. I also asked Mr R to comment on whether he had noticed the overspray from the poor repairs when he viewed the car, if he had mentioned this to the dealership and, if he *hadn't* noticed it, why this was.

Mr R responded as follows:

- His detailer had corrected the paintwork to an acceptable visual standard, but the finish was still below the manufacturer's specification in terms of paint and lacquer thickness.

- Neither he nor his father, who had accompanied him to look at the car, had noticed the overspray. The car had been viewed only in natural light on the day.

- He would not have purchased the vehicle had full disclosure been made about the repair works it had undergone.

- The additional work required by his detailer to attend to the hidden defects had cost £550, but he considered his financial losses were greater than this as the car had been sold to him for more than it was worth.

- He calculated his losses came to at least £5,830.21, this being the difference between what he paid and what he considered to have been the true value of the car (£23,569.50), plus £630 in additional interest he would need to pay on a bank loan he'd used to part-pay for the vehicle.

Mr R supplied an estimate from a main dealer which said it would cost £1,779.88 to replace the affected panels, and a further £510 to paint and fit them.

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.

When a consumer pays for goods in full or in part using a credit card, they may be able to obtain assistance from their credit card issuer if they have a problem with their purchase. In general, this includes pursuing a refund (of payments made on the card only) via the process known as a "chargeback", and asking the card issuer to honour a claim under section 75 of the Consumer Credit Act 1974 ("CCA").

I will firstly cover the question of VM's chargeback attempt briefly. I agree with our investigator that VM took this about as far as it reasonably could have, bearing in mind the dealership was clearly determined, based on their submissions, to fight the chargeback case tooth and nail. However, I don't think a chargeback was the right avenue for VM to consider in this case in any event. As I've indicated above, the maximum amount a chargeback could have recovered for Mr R was £200 – this being the amount paid on his card – and Mr R was seeking to claim a lot more than this. So it's not clear to me why VM decided to go down this route – indeed it appears to have contributed to delays in dealing with the matter overall.

Section 75 of the CCA

Section 75 of the CCA allows consumers to claim against their credit card issuer in respect of breaches of contract or misrepresentations by a supplier of goods or services they have paid using the credit card, so long as certain technical conditions are met.

It hasn't been argued in this case that any of the technical conditions haven't been met for a section 75 claim to be made (broadly speaking, these conditions relate to the price of the goods and the parties involved in the transaction). Having considered the evidence myself, I will say only that I conclude the necessary conditions are in place, and I have gone on to consider whether there has been a breach of contract or misrepresentation by the dealer, for which Mr R could make a claim against VM under section 75 of the CCA.

Breach of contract

A breach of contract occurs when one party to a contract fails to honour its contractual obligations to the other. These obligations may be written into the contract, or they may be treated as included due to the operation of law (these are sometimes known as "implied terms").

As Mr R purchased the car as a consumer, a relevant piece of law is the Consumer Rights Act 2015 ("CRA"). The CRA causes certain terms to be implied into contracts for the sale of goods. These include that the goods must be "satisfactory quality", which means the standard a reasonable person would consider satisfactory, taking into account the description of the goods, the price and any other relevant circumstances. Given this was the purchase of a used car, relevant circumstances would include the age and the mileage of the vehicle at the point of sale, because what is considered satisfactory quality will change depending on how old and road-worn a vehicle is.

The CRA provides specifically that a consumer cannot argue that goods are unsatisfactory quality because of something that was brought to their attention before the purchase, or which they ought to have noticed when examining the goods (if an examination took place prior to the purchase).

I do not think the particular paintwork and bodywork issues Mr R has complained of were specifically brought to his attention prior to purchase. But it's clear that Mr R (and, it seems, his father), examined the car prior to Mr R agreeing to buy it. Indeed, during this inspection several cosmetic issues were noticed, and Mr R negotiated a discount of £2,145 so he could get these corrected by his detailer.

Mr R did not notice any of the issues he now complains of, during the pre-sale examination. He has suggested that the fact the viewing took place in natural light was a factor in this, along with the fact that some of the defects were at a microscopic/molecular level and could only be detected with professional equipment. I'm aware that some cosmetic issues only become apparent under different lighting conditions so I'm willing to give Mr R the benefit of the doubt on this. This means I don't think he is prevented from arguing that the car was not satisfactory quality due to the fact he examined it prior to purchase.

This brings me on to the question of whether the defects Mr R has complained of made the car unsatisfactory quality at the point it was sold to him. The report supplied by Mr R's detailer said the following:

"Offside quarter is covered in overspray from poor masking. Offside quarter has an approximate maximum of over 2000 microns of paint and filler. That's 2mm of paint filler vs the factory paint which is approx. 100 micros (1/10th of a mm)."

The detailer, when asked to provide further comment, later said:

“

- *Paint depths are inconsistent on the repaired panel as well as being inconsistent with the manufacturer painted panels on the remainder of the vehicle.*
- *Originality and consistency of finish has been irretrievably lost across the vehicle due to these repairs.*
- *The vehicle no longer complies with the manufacturer bodywork standard and would invalidate any long-term anti corrosion warranty offered by the manufacturer.*
- *Additionally the standard of the repair is poor with sink evident to the surface, poor finishing with defects still visible, inconsistent profile to the repaired panel and various areas of overspray.*

“

The dealer accepted that its bodyshop had carried out the repairs to the rear quarter (and rear door) which Mr R’s detailer had identified.

I’ve thought carefully about whether the condition of the car when sold to Mr R – and specifically the paint/bodywork issues outlined above – meant the car was not satisfactory quality at that point in time.

It’s important to take into account the fact that this was not a brand-new car. It was nearly four years old and had covered over 25,000 miles by the time it was sold to Mr R. In my view it’s not reasonable to expect that the paintwork and bodywork on a car of this age and mileage will be perfect, unless of course it is described as such (which it wasn’t in this case). I think however, it would be reasonable to expect any repairs to the paintwork or bodywork to have been made to a reasonable standard. I don’t think a reasonable standard would mean restoring the paintwork or bodywork to a “factory fresh” condition, given the fact the car was several years old already. So I’m unconvinced by Mr R’s argument that the repairs ought to have restored the paintwork and bodywork to the manufacturer’s factory specification, and I think replacing the affected panels with brand new ones would have been disproportionate in the circumstances.

I’m also not convinced by Mr R’s concern that the car had been in a significant accident prior to it being sold to him. While the fact the paintwork and bodywork had been repaired indicates damage had been incurred in the past, it doesn’t necessarily follow that this was the result of a significant accident, rather than (for example) a scrape in a supermarket car park.

That said, I think it’s apparent from the report by Mr R’s detailer that there are elements of the repairs carried out prior to the sale of the car which were indicative of poor workmanship, specifically the sinkage, poor finishing, and overspray. It doesn’t appear to me that the repairs were carried out to a reasonable standard and, in light of this, I think the poor repairs meant the car was not satisfactory quality and the dealer was therefore in breach of contract.

This only gets Mr R part of the way towards obtaining redress however. The CRA prescribes certain remedies for consumers where goods are not satisfactory quality, however these are not exclusive and it’s possible for a consumer to claim damages under the common law instead, which is essentially what Mr R has been seeking from VM.

Damages are intended to be compensatory in nature – their purpose is to compensate someone for financial losses caused by the breach of contract. Damages are usually

awarded on either a “cost of cure” or “diminution in value” basis. In other words, the compensation will be the cost of repairing the goods to a satisfactory state, or the difference between the value of the goods in their unsatisfactory condition, and their value had they been satisfactory. In many cases these figures will be similar, as the value of goods can be restored by paying to correct their defects.

Mr R has said that he paid for his detailer to bring the affected panels up to an acceptable visual condition, and that this cost him £550. This, he says, was on top of what he paid the detailer to attend to the *other* cosmetic issues which he had negotiated a discount for from the dealer. Given what I’ve said above about the standard of quality that would be considered satisfactory for a car of this age and mileage at the point of sale, I think repairing the affected panels to an acceptable visual condition would be a fair and proportionate remedy to the dealer’s breach of contract and would bring the vehicle as a whole up to a satisfactory quality standard.

I don’t think Mr R has demonstrated that he has paid £550 specifically for this remedial work however. The invoice he has supplied for £550 lists multiple items, not all of which are related to works on the panels in question. Specifically, the invoice includes a multistage machine polish of the rest of the vehicle, and work on the offside front door (which was not an area affected by the dealer’s poor repairs). In my view, Mr R has failed to show that he has suffered a specific financial loss in remedying the poor repairs, and so it would not be fair or reasonable for me to direct VM to make a payment in respect of the invoice. If Mr R can show exactly how much the remedial works cost for the offside rear door and rear quarter, then I am minded to direct VM to pay this amount to him, along with compensatory interest.

Mr R also says the car was worth only £23,569.50 in the state he received it, rather than the £27,850 he paid for it. To support this argument, he has supplied valuations from two businesses which purchase cars from consumers, dated from August 2022. The valuations come to £23,139 and £24,000.

The difficulty I have with attaching much weight to the valuations provided by Mr R is that these are essentially “trade” prices in the sense that they are approximately what the car buyers in question would pay Mr R for the vehicle, and not what it could be sold for at a dealership to another consumer. So, comparing these valuations to the price Mr R paid for the car is not a helpful comparison. And I note it is not the purpose of section 75 of the CCA to enable Mr R to renegotiate a deal he is, on reflection, unhappy with.

As I indicated earlier, the cost of repair will often be approximately equal to the difference in value. So I’d be inclined to believe the car was worth about £550 less than Mr R paid for it, assuming of course he can prove that he paid this amount to remediate the dealership’s poor repairs. I know Mr R is concerned about the car having lost its originality of paint finish, but I don’t think this is likely to have a material impact on the value of a car, unless it is being kept in pristine condition as an investment. Given Mr R has covered over 20,000 miles in this car since purchase, it doesn’t appear likely to me that it was purchased with investment in mind, rather it seems to have been bought for day-to-day use.

Misrepresentation

In the context of Mr R’s case, a misrepresentation would be a false statement of fact or law made by the dealership to Mr R, and which Mr R relied on when deciding to enter the contract to buy the car.

I think the evidence in this case – and especially a series of WhatsApp messages with the dealership – shows that Mr R was anxious to obtain details about various aspects of the car,

including its condition and cosmetic appearance, before he went to view it. While there were conversations which were not documented (for example, phone calls), the messages indicate Mr R asked a lot of questions in the negotiations leading up to him purchasing the car.

Mr R says he asked if any work had been carried out on the car, and that the dealership replied that the wheels had been refurbished. I think this probably happened as Mr R has described. The dealer has never denied it happened, and the fact that it referred to only having seen the invoice for the bodywork repairs *after* Mr R had already bought the car, strongly suggests to me that it did not mention these repairs to Mr R when he asked if any work had been carried out on the car.

Representations do not have to be made expressly – they can be implied by what is said and what is not said in response to a question. If Mr R asked the dealership if any work had been carried out on the car, and the dealership said the wheels had been refurbished, then I think the dealership made an implied representation that this was the *only* work it had carried out on the car. This was false, as invoices show that the bodywork repairs had been carried out in December 2021, months before Mr R entered into negotiations to buy the vehicle.

Whether the person Mr R was communicating with at the dealership knew about the bodywork repairs or not at the time doesn't matter, as either way a false statement was made. The cosmetic condition of the car was clearly important to Mr R, and so I think he relied on this statement when agreeing to make the purchase on the terms that he did. I think had he been advised of the true position he'd likely have tried to negotiate a better price. It is of course possible he would simply have walked away from the deal, but given he has driven the vehicle extensively over the past two years, and he claims to have corrected the defects which were not disclosed to him[2], I don't think it would be fair for him to be able to rescind (unwind) the contract at this point. The Misrepresentation Act 1967 provides that damages can be awarded in lieu of rescission – and while I cannot be sure if this is what a court would do when faced with Mr R's situation – I think it is at least likely in the circumstances I've described above. I also do not think that Mr R *wants* to rescind the contract in any event – he hasn't asked for this and based on what he has said he appears to like the car. He is however understandably unhappy that the dealership gave him a misleading picture of its cosmetic condition.

This leads me back to the conclusions I reached in my section above on breach of contract. I think it's likely damages would be calculated by reference to what Mr R had needed to pay to correct the undisclosed defects. As I've explained above, Mr R hasn't been able to show what (if anything) he paid to do this on top of other works he had asked his detailer to carry out for him. So, as things stand, I can't reasonably require VM to make a payment to him in respect of this.

Overall, I don't think VM treated Mr R unfairly or unreasonably by declining his section 75 claim.

Customer Service

Taking a broad view of the customer service provided by VM, I agree that the chief failing was a significant delay in handling Mr R's dispute and claim. Although there is no statutory timeframe within which a card issuer must respond to a section 75 claim, the Financial Conduct Authority has made it clear that it expects card issuers to respond to such claims within a reasonable time.

[2] To an acceptable visual standard, which is what I think would have been reasonable for a car of this age and mileage.

In this case, Mr R approached VM for assistance in August 2022, but his claim was not responded to until April 2023. While I don't think this was a straightforward claim, I think there were some avoidable delays caused by decisions VM made. In particular, its decision to put its consideration of the section 75 claim on hold while it pursued a chargeback, when this was not really an appropriate method for obtaining redress, caused avoidable delays.

While VM paid £70 to Mr R as compensation for delays, this amount does seem a little low to me given the length of the delays and the evident frustration this caused Mr R, who was frequently chasing for updates. I think £150 compensation would be fair in the circumstances.

My provisional decision

For the reasons explained above, I'm currently not minded to uphold Mr R's complaint in relation to the outcome of his section 75 claim, unless he is able to evidence the costs he incurred specifically for bringing the offside rear door and rear quarter panels up to an acceptable visual standard.

If Mr R is able to provide such evidence, I am minded to direct Clydesdale Bank Plc trading as Virgin Money to cover these costs along with compensatory interest, as this would have been a fair way for it to have settled his section 75 claim.

I am minded to uphold the part of Mr R's complaint relating to customer service and claims handling – and award him a further £80 on top of the £70 he has already received.

I now invite both parties to the complaint to let me have any new evidence or arguments they would like me to consider. These must reach me before 7 August 2024. I will then review the case again.

Will Culley
Ombudsman