

## **The complaint**

Mrs B complains that Clydesdale Bank Plc trading as Virgin Money has unfairly declined her claim under Section 75 of the Consumer Credit Act 1974 (Section 75).

## **What happened**

Mrs B purchased some wine glasses from an auction house. The total purchase price was £6,620. In September 2023, she made some payments towards the purchase on her Virgin Money credit card via two transactions - one for £4,620 and the other for £1,890 as per her credit card statement. £1,620 of this amount went towards the service fee charged by the auction house, who I'll call "A".

Mrs B states that A misrepresented the auction lot. In the online image, there were ten glasses (six of Type L and four of Type B) and the same information was confirmed to Mrs B over the telephone. However, on collection only five of the six Type L glasses were provided. In addition, one of these five glasses had substantial damage. Mrs B tells us that the staff member at A wrote on the property release note that one of the glasses was unaccounted for and one was damaged more severely than stated.

Mrs B raised a claim under Section 75 to Virgin Money. She wanted the £1,620 paid towards the service charge to A to be refunded on the basis that the lot had been misrepresented to her. On review, Virgin Money said it couldn't raise a chargeback as it did not have enough information to support that a breach of contract or misrepresentation had occurred. It also reviewed the claim under Section 75 and said that as Mrs B was purchasing goods from a retailer through A, and had not paid the retailer directly, it could not hold A liable for any misrepresentation made by the retailer.

Mrs B brought a complaint about the outcome of her claim to our service. She said the glasses were not as described and she would like the service charge taken by A to be refunded. She further said Virgin Money's responses were delayed and contained inaccurate comments and information. Mrs B asked us to review her complaint and asked for additional compensation for the delays, time and effort incurred to be considered as well.

Our investigator considered the complaint and said she did not think the business had done anything wrong. She agreed with Virgin Money that Mrs B didn't provide enough information for it to proceed with a chargeback. Regarding Section 75, she said as A was an agent of the retailer, it was not responsible for the listing. The investigator was not persuaded that there was enough information to support a breach of contract or misrepresentation that A can be held liable for, and therefore by extension, Virgin Money.

Unhappy with this outcome, Mrs B asked for an Ombudsman to review the complaint. So, it has now 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.

Mrs B has indicated that she is not concerned with the lack of progression of the chargeback claim, and instead would like focus to be put on her rights under Section 75 so I have given this my attention in this decision.

Section 75 of the CCA allows – in certain circumstances - for a creditor (Virgin Money) to be jointly and severally liable for any claim by the debtor (Mrs B) of breach of contract or misrepresentation made by a supplier of goods and/or services.

It is clear that Mrs B thought she would be receiving six of glass Type L based on the image of the lot on A's website and the information she was given over the telephone, and she was only given five. It is also apparent that the image from the original listing does not show the extent of the damage to one of the glasses and based on what she's said, it's unlikely she was informed about this. So out of six glasses, Mrs B received five, one of which was damaged – and I don't think there is any dispute about this. Having said that, Virgin Money have focused on liability and whether A can be held responsible. So, I will focus on the same keeping the above in mind, to determine whether Virgin Money have acted unfairly.

A has published its terms of business on its website. These terms state the following which are relevant:

*“Our and the Seller's relationship with Buyers and any Bidders in relation to the Lots offered in a sale is governed by these Conditions of Business for Buyers and the express representations and warranties and indemnity given by the Seller. Unless we own a Lot in whole or in part, we act solely as agent for the Seller. A sale contract is made directly between the Seller and the Buyer.”*

It therefore appears that A act as an agent for various sellers and provide a platform for buyers to purchase items from those sellers. If a bid is made and accepted, then a contract is formed between the seller and the buyer, and A as an agent takes no liability for issues arising out of that sale contract. It is therefore reasonable to conclude that as an agent, A takes no responsibility for the listings on its website as it acts purely as a bridge between a seller and a buyer.

These terms also indicate there may be listings in relation to lots which A owns in whole or in part. In situations where A owns the goods in whole, A itself would be the seller. In this scenario, A would naturally take responsibility for the listings on its website as it could not be classified as an agent when it owns and is selling the goods. If on the other hand, A owns the goods in part, the situation is a little more complicated and its likely the seller and A both take responsibility for the listing to some extent, but it is more difficult to pin down responsibility and I would likely look to who provided the information.

One of the requirements of Section 75 is that there must be a debtor-creditor-supplier (DCS) relationship. Put simply, this means that there must be direct links between the debtor (Mrs B), the creditor (Virgin Money) and the supplier.

Starting with the seller of the glasses, there's a contract between Mrs B and the seller. But the money was paid from the bank to the auction company (A). So if the seller is a third party there's no direct link between Virgin Money and the seller. This means that, under section 75, Virgin Money isn't responsible for any misrepresentation or breach of contract by the seller. This is unless A owns the lot and is the seller. None of the information provided on this complaint tells me who the seller is and importantly, whether or not it is A (who can then be held responsible for the listing). So I don't agree with Virgin Money that as Mrs R didn't pay the retailer directly, A can't be held responsible for any misrepresentation. I say this

because until we know who the seller is, we cannot answer this question.

I've reviewed A's terms of business because Mrs B has paid a fee to it. This fee was paid directly from Virgin Money to the auction company. So, I think there is a DCS relationship there. And I find that we have enough information to proceed despite not knowing who the seller is as Mrs R has specifically asked for this fee to be refunded.

A's terms of business say the following about the auction lots:

### 3. The Lots

*(a) All Lots are offered for sale in the condition they are in at the time of the sale. You acknowledge that many Lots are of an age and type such that they are not in perfect condition. Catalogue descriptions and condition reports may refer to imperfections of a Lot or Referenced Content, but Lots or Referenced Content may have other faults not expressly referred to in the Catalogue or condition report. Illustrations are for identification purposes only and may not convey full information as to the actual condition of a Lot or Referenced Content.*

*(b) You accept responsibility for carrying out your own inspections and investigations of Lots in which you may be interested. You should inspect a Lot before bidding to determine and to satisfy yourself as to its condition, size, description and whether it has been repaired or restored, as applicable, and we accept bids on Lots solely on this basis.*

*(c) You acknowledge that our knowledge of each Lot is partially dependent on information provided by the Seller, and we are not able to and do not carry out exhaustive due diligence on each Lot."*

Term 3(c) indicates A accepts information from sellers and is not always able to verify this before listing which means it is dependent on information from its sellers when providing images and information about lots. The words 'partially dependent' also suggest that to some extent, A may also add information about the lot to its website. But, 3(a) and 3(b) point to the fact that lots are sold on the basis that there may be imperfections not listed, images are only for identification purposes and the onus is on the buyer to do due diligence before purchase as necessary.

All of this information suggests that A acknowledges that lots may not be exactly as described or the illustrations provided. The terms of business specifically refer to the potential of the condition of items not being as described. There is also reference in 3(a) to illustrations potentially not conveying full information as to the content of a lot. The terms account for both of the issues Mrs B has complained about.

In addition, I must also consider that Mrs B noted the discrepancies in the items on collection and continued on to collect the lot. We have been in touch with A who has told us that it has offered to refund the cost of two glasses to Mrs B as a gesture of goodwill. I appreciate that Mrs B does not think this relevant to this complaint, however it forms part of our inquisitorial remit to contact A and ask it questions about what has happened, especially in this case, where the question put before me is whether Virgin Money should be held responsible for errors made by A – who have already taken steps to attempt to put things right.

So to summarise, I find that in this particular complaint Section 75 is only relevant to the extent that it covers the service charge Mrs B paid to A if A is not the seller. If A is the seller, the required DCS relationship is in place. But answering this question is not crucial because even if we assume A is the seller and correct relationships for a successful claim under Section 75 are in place, the terms of business allow for the issues Mrs B experienced, and A

does not accept liability for those issues. Crucially, A has already taken steps to put things right for Mrs B. So overall, I don't think Virgin Money has treated Mrs B unfairly in failing to proceed with her claim under Section 75.

Lastly and for completeness, Mrs B has complained about the delays experienced in the handling of her Section 75 claim. Having looked at this, I can see that any delays experienced when the claim was first raised were because Mrs B sent the claim to Virgin Money's complaints department. This also explains why she received generic updates until the complaint was allocated. When a case handler was assigned in the complaints department, they recognised immediately that the matter needed to go to claims and sent it there on the same day. The claim was handled within a reasonable timeframe once it got to the right place. I agree with Mrs R that Barclaycard was incorrect to say she hadn't provided information when she had. But, I don't think this error means Virgin Money need to do anything further to put things right.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 15 May 2025.

Vanisha Patel  
**Ombudsman**