

The complaint

Mr A complains that Clydesdale Bank Plc has not refunded a credit card payment after incorrect items were delivered to him. Clydesdale Bank operates in this case under its Virgin Money brand.

What happened

At the end of December 2023 Mr A bought two mobile handsets from a well-known department store. He ordered them online and paid just over £3,200 using his Virgin Money credit card.

A few days later a parcel was delivered to Mr A by a courier company (not by the retailer's own delivery service). The parcel was received by a family member, who provided a PIN to the courier.

Mr A was unable to open the parcel immediately but, when he did, he says it contained a selection of bath bombs, not the mobile handsets he had ordered.

Mr A complained to the seller, which said it was satisfied the correct items had been delivered to him. It did not offer a refund or replacement.

Mr A referred the matter to Virgin Money. After contacting the retailer, it said that it did not believe any refund was due, either under the chargeback scheme or under section 75 of the Consumer Credit Act 1974 ("section 75").

Mr A therefore referred his complaint to this service, where one of our investigators considered what had happened. She did not recommend that the complaint be upheld. Mr A did not accept that recommendation and asked that an ombudsman review the case.

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.

Chargeback

Where goods or services are paid for with a debit or credit card and a dispute arises, it is often possible to resolve that dispute through the chargeback process. Chargeback is a scheme run by the card schemes (in this case, Mastercard). A card issuer (here, Virgin Money) raises a claim through the scheme against the merchant's provider of card facilities. That provider will then consider whether the claim meets the relevant criteria for chargeback (if necessary, seeking evidence from the merchant) before responding to the claim. Where necessary, the scheme provides for arbitration between the financial businesses.

Chargeback is primarily a scheme for resolving disputes about payment settlements – including, for example, where goods have been paid for but not delivered, or where they do not meet their description. In this case, either of those might apply, and they were the reasons which Virgin Money gave when it sought to exercise chargeback rights.

There is no legal or regulatory obligation on a card issuer to pursue a chargeback claim, but this service takes the view that they should do so where there is a reasonable prospect of success.

In this case, Virgin Money did make a claim, but it was defended by the retailer, who provided evidence that the parcel had been delivered to Mr A. In the circumstances, I do not believe that Virgin Money could realistically have done anything more under the chargeback scheme to obtain a refund.

Section 75

One effect of section 75 is that, subject to certain conditions, an individual who uses a credit card to pay for goods or services and who has a claim for breach of contract or misrepresentation against the supplier of those goods or services has a like claim against the credit card provider. The necessary relationships between Virgin Money, the retailer and Mr A are present in this case, and the transaction falls within the relevant financial parameters. I have therefore considered Mr A's dealings with the retailer.

The key issue for a section 75 claim in this case is whether Mr A received the mobile handsets he ordered or something else. I have therefore considered whether incorrect items were sent by the retailer, as well as whether they were swapped by the courier.

There is no dispute that a package was delivered to Mr A (or to a family member acting with his authority). Whilst the retailer referred to a PIN being provided to the courier, that shows only that a package was delivered to someone who could provide the PIN. It does not really provide evidence of what was in the package.

Mr A reported that there was a problem with the package almost immediately, and certainly on the day of delivery. He has provided a photograph of the packaging and of the items he says he received.

In my view, however, it is unlikely that anyone packing items for delivery would have been able to swap mobile handsets for bath bombs without arousing suspicion, especially if they wanted to keep the handsets for themselves. It is even less likely that they would have done so in error.

I think it is also unlikely that the courier would have swapped the items. There is, for example, no evidence that they would have known that Mr A's package contained expensive handsets – although the fact that delivery was confirmed by PIN does indicate a high value item or items.

In addition, Mr A has said that there was nothing to suggest that the package had been tampered with before he opened it. I do not believe that would have been the case if the handsets had been removed and replaced after the package had left the warehouse.

On balance, therefore, I think it more likely than not that the mobile handsets were correctly delivered to Mr A.

It is not for me to say whether Mr A does in fact have a claim against the retailer. Nor is it for me to decide whether he has a claim against Virgin Money under section 75. What I must do is decide what I consider to be a fair resolution of Mr A's complaint about Virgin Money's decision to decline his claim. In the circumstances, I think it was reasonable of Virgin Money to do so.

My final decision

For these reasons, my final decision is that I do not uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 March 2025.

Mike Ingram
Ombudsman