

The complaint

Mr C has complained about the way Clydesdale Bank Plc trading as Virgin Money dealt with his request for money back.

What happened

The circumstances of the complaint are well known to the parties so I won't go over everything again in detail. But, to summarise, Mr C purchased an aligner treatment from a supplier in November 2021 for £723 using his Virgin Money credit card. He said the treatment was due to last 12 months and he contacted the supplier in October 2022 because he wasn't happy with the results. He wanted further treatment from the supplier and two sets of retainers which were due to be provided. Mr C said the supplier told him to see a dentist while it reviewed the case as it had some problems manufacturing retainers at that point. Mr C said he chased the supplier several times and then found out it had closed.

Mr C decided to put in a claim with Virgin Money. He said he originally contacted it in June 2023 but after not receiving a response he contacted it again in October 2023. Virgin Money requested further information around December 2023 but Mr C said he wasn't well enough to respond at that time. Mr C said he followed up in early 2024 with supporting information.

In July 2024 Virgin Money sent a response to say sorry for the length of time it took to look into the dispute and it offered him £50, which was increased to £100. Mr C decided to refer his complaint to the Financial Ombudsman.

Our investigator looked into things and thought the contract Mr C entered into included:

- An impression kit
- A smile projection
- Clear aligners
- Retainers

She said in the absence of a contract she couldn't say with any certainty if the treatment plan achieved what it meant to. But she thought there was a breach of contract because retainers weren't provided. She thought Virgin Money should pay Mr C 50% of the contract value to acknowledge what wasn't provided under it – £361.50. She thought the compensation for the delays was fair.

Virgin Money agreed with the proposal but Mr C didn't. He said he'd provided evidence he was due two sets of retainers. He said the 50% refund was inadequate. He said he wasn't able to mitigate and reiterated Virgin Money didn't handle the claim well. Mr C said Virgin Money gave him misleading information and the compensation wasn't sufficient. He said Virgin Money's handling contributed to his stress, anxiety and fatigue and it didn't appropriately account for his circumstances or the Equality Act 2010's requirement for reasonable adjustments. He requested a full refund; an apology; and increased compensation.

As things weren't resolved, 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 want to acknowledge 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'm required to decide matters quickly and with minimum formality. But I want to assure Mr C 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.

What I need to consider is whether Virgin Money – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr C's request for getting money back. It's important to note Virgin Money isn't the supplier. I've gone on to think about the specific card protections that are available. In situations like this, Virgin Money can consider assessing a claim under section 75 of the Consumer Credit Act 1974 ("s.75") or raising a chargeback.

S.75 is a statutory protection that enables Mr C to make a like claim against Virgin Money for breach of contract or misrepresentation by a supplier paid by credit card in respect of an agreement it had with him for the provision of goods or services. But there are certain conditions that need to be met for s.75 to apply. The value of the transaction falls within the financial limits. And I think the necessary relationships exist between the parties.

Implied terms

In cases such as this it is often complex to assess the quality of the service Mr C paid for. Results from such treatments are subject to many variables. While I appreciate his reasons for not doing so, Mr C has not provided supporting evidence such as an independent, expert opinion that sets out the treatment he paid for has not been done with reasonable care and skill as implied by the Consumer Rights Act 2015 ('CRA'). I'm mindful it is the manner in which the service was provided rather than the results of the treatment that is the crucial issue for me in considering whether there's been a breach of an implied term in relation to the service.

I'm not a dental expert, and neither is Virgin Money. Without sufficient supporting evidence, I don't think Virgin Money was unfair to not uphold the claim on the basis of a breach of an implied term of the contract because I've not seen enough to determine the service the supplier offered wasn't carried out with reasonable skill and care, or from a goods perspective, that the aligners weren't of satisfactory quality.

Express terms

I also need to consider what I think Mr C's contract with the supplier agreed to provide in terms of treatment so I can determine whether there has been a breach of an express term of it. I don't have a contract signed by Mr C. There's a lack of evidence, which makes it very difficult to assess. But it's not in dispute Mr C was due to receive a set of aligners when he entered into the contract in November 2021 and that he received and used them. I think the core contract was for those sets of aligners that he used for around a year.

Mr C said he was also due to receive retainers at the end of the treatment. And it doesn't seem to be in dispute the supplier was unable to supply them. So on balance I agree there's been a breach of an express term of the contract.

Complaints about treatments such as this are complicated to resolve. On the one hand,

Mr C's point is that he paid for a service, said his teeth were in a worse position than when he started, and that the supplier didn't provide everything under the contract. So it should be a straight-forward matter that he should receive a full refund.

On the other hand, Virgin Money would have had no way of knowing whether Mr C followed the plan. There's a lack of documentary evidence by way of a contract. I can't see it was guaranteed Mr C would achieve a certain result. Quite often with these sorts of treatments there are disclaimers that results can't be guaranteed because the results can be affected by all sorts of things such as the patient's physiology, medical history and how they use the product. It's also impossible for Virgin Money to know to what extent Mr C may have achieved some sort of benefit from the treatment.

Retainers are meant to be used to retain the results, and Mr C said he wasn't happy with the results, and so there's an argument they may not have been suitable for him at that time. And I've not seen enough to know the supplier was contractually required to provide further treatment other than the retainers. There's also a requirement for mitigation and, based on other cases we've seen, there are several suppliers of retainers available – either with an in-person dentist/orthodontist or through online suppliers. And while Mr C doesn't agree, I think the retainers would have needed to be made based on the position of the teeth at the end of the treatment – not based on the initial projection given it would be hard to predict with certainty exactly where the teeth would be 12 months later. So there was the option (as the supplier suggested) for Mr C to go elsewhere. But I can understand why he didn't want to do that given he'd already paid for the retainers (and he wasn't happy with the position of the teeth).

Mr C thinks he should be provided with a full refund of the treatment costs. Even accepting the supplier couldn't provide retainers, given the stage of treatment he was at, I can't see the contract provided him the option of a refund of the core treatment costs. Based on the evidence Mr C supplied, cancellation was only available if he returned the goods in still new condition, and a 20% deduction would be made from the refund. While I'm not saying something hasn't gone wrong, I don't think it would be fair or reasonable for me to tell Virgin Money that it should now provide Mr C with a full refund to compensate him for a potential loss through breach of contract based on the very limited evidence available.

Virgin Money has agreed to refund Mr C 50% of the contract cost. Taking into account I think Mr C received the aligner treatment, I agree Virgin Money should offer this price reduction to remedy any potential loss. It's not perfect, but it seems like a fair compromise given I think the total amount paid was substantially for the core treatment.

Chargeback

The chargeback process provides a way for a card issuer to ask for a payment to be refunded in certain circumstances. The chargeback process is subject to rules made by the relevant card scheme. It's not a guaranteed way of getting money back. While it's good practice for a card issuer to attempt to chargeback where certain conditions are met and there's some prospect of success, there are grounds or dispute conditions (including time limits) set by the relevant card scheme that need to be considered. If these are not met, a chargeback is unlikely to succeed. And something going wrong with a merchant won't always lead to a successful claim.

Given I agree Virgin Money should refund Mr C 50% of the treatment cost in recognition he wasn't supplied retainers, and that a chargeback would have likely been out of time, I don't think I need to consider the chargeback further because I don't think that would have led to a better outcome.

Claim handling

I'm sorry to hear that Mr C has said the situation has contributed to his stress, anxiety and fatigue. I can't imagine how he must feel, but I thank him for taking the time to bring his complaint.

It's important to set out up front that even if the complaint was upheld, I'm unable to make an award for loss of amenity so if Mr C was looking to pursue this aspect of the complaint, he may wish to seek independent legal advice because I can't cover it in a decision. But I am able to consider how Virgin Money dealt with the claim overall.

Mr C has complained Virgin Money has failed to make reasonable adjustments for him. In other words, has failed its duty to make reasonable adjustments under the Equality Act 2010. I've taken the Equality Act 2010 into account when deciding this complaint – given that it's relevant law – but I've ultimately decided this complaint based on what's fair and reasonable. If Mr C wants a decision that Virgin Money has breached the Equality Act 2010, then he'd need to go to Court. That being said, I think Mr C's complaint in this respect seems to stem from the cumulative impact of Virgin Money repeatedly asking for information he said he'd already submitted. I've thought holistically about what he's said, along with the way Virgin Money handled the claim.

Virgin Money has accepted that it provided Mr C with poor customer service. Mr C doesn't see it that way. He believes that what Virgin Money has done goes beyond poor customer service. He felt discriminated against. I can understand why Mr C feels this way, and I do think Virgin Money hasn't quite grasped how its actions have made Mr C feel.

I think overall it did take too long for Virgin Money to answer Mr C's claim. I primarily need to consider what happened up to when it sent its final response letter because the events preceding that relate to what it had the chance to consider. It seems some delays were due to documents being lost or not received, some were because Mr C said he was too unwell to deal with things, and some I think were down to Virgin Money not responding within a reasonable amount of time or by asking for the same information.

As I've said above, I don't think all the delays were down to Virgin Money. And I can understand why it asked for certain information to consider the claim. But things could have gone better. While there might not be a specific timescale for dealing with s.75 claims, the Financial Conduct Authority has set out it expects those disputes to be dealt with in a reasonable amount of time. I don't think that happened here and it's caused Mr C some distress and inconvenience. Virgin Money has offered £100 for the overall way things were handled. Together with the 50% refund amount it has agreed to pay, in the round I think this is fair when thinking about Virgin Money's involvement that I can consider under this complaint. I'm not going to make further directions. Mr C is, however, free to pursue the complaint by other more formal means, such as through the courts, if he thinks he could achieve a more generous outcome.

My final decision

My final decision is that I uphold this complaint and direct Clydesdale Bank Plc trading as Virgin Money to the extent not done so already to pay Mr C £461.50 (£361.50 + £100).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 August 2025.

Simon Wingfield
Ombudsman

