

The complaint

Mr H has complained that Clydesdale Bank Plc trading as Virgin Money “Virgin Money” rejected his claim against it under Section 75 of the Consumer Credit Act 1974.

What happened

The circumstances leading up to this claim aren’t disputed so I’ve only briefly set them out here. Mr H bought a lockable towbar carrier from a supplier (who I’ll refer to as S), in September 2023 for £620. The purchase was funded with Mr H’s Virgin Money credit card, and that business is therefore liable for any misrepresentations and/or breach of contract of the supplier under the relevant legislation.

Mr H used the carrier several times after his purchase, but in May 2024, Mr H says the lock on the clamp jammed and the key broke off, leaving the bottom part of the key lodged in the lock. Mr H asked a locksmith to help but the locksmith couldn’t remove the fragment.

Mr H contacted S, who said they would look at the issue under a warranty that was in place for the carrier – but Mr H would have to arrange for the carrier to be sent to S – at his cost in accordance with the terms of the warranty. Mr H says he was unable to return the carrier as he couldn’t find a box big enough to put the carrier into.

Unable to resolve matters with S directly, in July 2024, Mr H raised a section 75 claim under the Consumer Credit Act 1974 (s.75), saying he wanted to reject the carrier because it was not of satisfactory quality and not fit for purpose. Virgin Money rejected the claim because it felt S had acted in accordance with its contractual terms therefore there was no breach of contract. Mr H referred the matter to our service.

Mr H’s complaint was considered by one of our investigators who, for the same reasons as those set out by Virgin Money, didn’t think the complaint about Mr H’s s.75 claim should be upheld. He also considered whether Virgin Money ought to have considered attempting a chargeback against the merchant – but noted that Mr H was out of time under the scheme rules (120-day limit from delivery). So, overall, he didn’t think Virgin Money needed to do anything further in respect of Mr H’s claim.

Mr H disagreed. He said he now worries about the carrier and the bikes being stolen without a usable lock. The security against theft was an important feature of the purchase. He feels the lock suffered from fatigue failure and that a fatigue crack had been growing every time he locked or unlocked the carrier. He said that the locksmith commented that the lock was defective and in conversation, the locksmith added that it was clear that the defect originated in manufacture and, therefore, was present at the time of purchase.

As the complaint couldn’t be resolved by our investigator, I’ve been asked to make a decision.

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.

Firstly, I'd like to reassure Mr H, that I have considered all his concerns carefully, but I will only be dealing with the most salient parts of his complaint in this decision as I'm required to decide matters quickly and with minimum formality.

Chargeback

Virgin Money didn't attempt a chargeback for Mr H when it was informed of Mr H's concerns but as explained by our investigator – given that he didn't raise his concerns with Virgin Money until July 2024, which was 10 months after delivery of the carrier, I am inclined to agree that he was out of time under the relevant chargeback rules to make a claim. So, I don't think Mr H has lost out because of anything Virgin Money did/did not do.

Section 75 claim

I'm sorry to hear that Mr H is unhappy with the carrier and appreciate his security concerns when he takes the carrier and his bikes out without the lock. But it may be helpful to explain that I need to consider whether Virgin Money – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr H's claim. But it's important to note Virgin Money isn't the supplier. S.75 is a statutory protection that enables Mr H to make a 'like claim' against Virgin Money for breach of contract or misrepresentation by a supplier because he paid for the goods using a Virgin Money credit card. But I want to explain from the outset that I can only consider Mr H's complaint on that narrow basis – that is, whether it was fair and reasonable for Virgin Money to respond to his claim in the way that it did.

There are certain conditions that need to be met for section 75 to apply. From what I've seen, those conditions have been met and Virgin Money has also agreed that s.75 applies.

I've mainly focussed on Mr H's claim for breach of contract as he hasn't alleged that S made any misrepresentation that caused him to suffer loss. But he simply doesn't feel the goods were of suitable quality due to the lock now requiring a repair.

In order for me to uphold a complaint about how Virgin Money responded to Mr H's s.75 claim, I'd have to be satisfied that S breached a term of the contract – and that caused him to suffer loss. I'd have to consider if S breached any express or implied terms of the contract as part of my assessment of the complaint.

Breach of contract – express terms

It doesn't seem to me that Mr H is making any arguments that S breached any express terms of the contract. I can see he ordered and paid for the carrier in September 2023, and it was delivered promptly afterwards. And Mr H went on to use it for almost 8 months without problem.

The contract for the sale of the goods seems to have included the provision of a warranty, which has been provided. It's not clear whether a breach of a term under a separate warranty would be something Virgin Money would be responsible for under a s.75 breach of contract claim. However, even if it was, based on S's website it seems Mr H is responsible for returning the carrier to enable S to assess whether a repair is covered under the warranty in any event. So, I don't think it was unreasonable for Virgin Money to conclude that S has acted in accordance with the contractual terms of the contract/warranty.

So, it doesn't appear to me that S breached any express terms of the contract.

Breach of contract – implied terms

The Consumer Rights Act 2015 (CRA) is also relevant to this complaint. The CRA implies terms into the contract that the goods must be of satisfactory quality, aspects of which include goods being durable and free from minor defects. The CRA also sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.

I've considered whether there's sufficient evidence that the carrier was not of satisfactory quality – which is an implied term of the contract by the CRA. Mr H has had no problems using the carrier for around 8 months until the lock broke and has advised he can continue to use the carrier – but he cannot use the lock until it's repaired. These facts appear to be undisputed. But I need to assess whether this constitutes a breach of contract – something Virgin Money would be responsible for.

The CRA sets out that goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day unless it's established the goods did conform to the contract on that day or that the application is incompatible with the nature of the goods or with how they fail to conform to the contract.

As Mr H raised his concerns more than 6 months after the sale, the onus generally is on him to provide evidence that the carrier was of unsatisfactory quality at the time of sale. He has said he feels the lock suffered fatigue failure and that the locksmith commented that there was a manufacturing defect which was present at the time of sale – but he has provided insufficient evidence to corroborate those claims. Usually, businesses like Virgin Money would require something like an independent report from an expert to support the claim that the carrier was of unsatisfactory quality at the time of sale.

The note Mr H has provided from the locksmith sets out that the locksmith believes the barrel of the lock has “*seized*” resulting in the key breaking in the lock, and this was “*possibly due to the tumblers jamming*”. He goes on to say the lock needs changing. But nothing in this invoice/note says that the carrier is of unsatisfactory quality, or that this was a manufacturing defect that was present at the time of sale. Locks sometimes break, but this could have been caused by any number of reasons, (wear and tear, misuse, overuse, accidents etc). The fact that the lock broke some 8 months after purchase isn't in itself sufficient to show the entire carrier isn't of satisfactory quality.

Based on the fact that there doesn't seem to be sufficient evidence from an independent third party expert stating that the carrier is of unsatisfactory quality, that Mr H used the carrier for almost 8 months before he had problems with the lock– whilst I sympathise with his position, I don't think it was unfair for Virgin Money to conclude that there's insufficient evidence that there has been a breach of contract here – in terms of the carrier being of poor quality and not fit for purpose.

I would add that I am not saying for certain that something hasn't gone wrong with the carrier – but that the onus is on Mr H to prove that the carrier was of unsatisfactory quality when he bought it, and currently, there's insufficient evidence to demonstrate this. If Mr H was able to demonstrate with sufficient evidence that the carrier was of unsuitable quality when it was sold to him, then under the CRA, S would likely be responsible for covering the cost of postage when returning the item. But as I've said, currently I don't think Mr H has been able to provide that evidence necessary to prove that the carrier was of unsatisfactory quality.

I am sympathetic to the difficulties Mr H has faced in returning the item given its size and weight – and also appreciate his sincere worries about using the carrier without the lock

being replaced/repaired. But Virgin Money is only obligated to offer a remedy when Mr H is able to establish with evidence that S has breached the contract which caused him loss. As explained above, I am looking at a claim against Virgin Money to assess whether its response to Mr H's s.75 claim is fair – and not against S and everything that might've gone wrong with them. Compensation for poor service and general unhappiness are not normally recoverable through a s.75 claim with this type of claim.

While I am sorry to hear Mr H is unhappy, with s.75 in mind, I don't find there currently are grounds to direct Virgin Money to refund him the full cost of the carrier like he requested. If he is able to obtain evidence such as an independent expert report proving the carrier wasn't of satisfactory quality at the time of sale, then he can send that to Virgin Money to ask for it to reconsider his claim.

I would also point out Mr H doesn't have to accept this decision. He's free to pursue the complaint by more formal means such as through the courts.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 May 2025.

Asma Begum
Ombudsman