

The complaint

Mrs R's complaint is about Clydesdale Bank Plc trading as Virgin Money's handling of a dispute about the quality of a sofa she purchased with her credit card.

What happened

In December 2020 Mrs R purchased a sofa from a merchant (who I've referred to as 'D' throughout my decisions). During the sales process she also took out an insurance policy for the sofa which was provided by a third party (who I've referred to as 'G' throughout my decisions).

Mrs R contacted D and G in 2024 as she said the interior fillings of the sofa weren't springing back and as such the seat cushions were sagging. Mrs R wanted the interior fillings replaced; or to receive a refund for the sofa.

D said its standard warranty only covered defects that occurred within the first two years, and therefore it didn't offer Mrs R any assistance. G stated the insurance policy didn't provide cover for interior fillings not springing back to their original shape. Mrs R complained about the sale of the insurance policy stating it has been mis-sold; and as a gesture of goodwill D offered to refund Mrs R the full cost of the insurance policy of around £90.

Mrs R contacted Virgin Money after her dispute wasn't resolved to her satisfaction.

Virgin Money considered a claim under Section 75 (S75) of the Consumer Credit Act 1974 (CCA). It requested information, including an independent report setting out details of the manufacturing quality of the sofa, in support of her claim.

Mrs R complained to Virgin Money about its handling of her claim, and it issued a final response letter in September 2024. This set out that it was waiting on information from Mrs R before progressing her S75 claim. However, it identified a delay in providing her with its final response letter and it offered her £70 for this customer service failing.

Unhappy with Virgin Money's response Mrs R referred her complaint to our service.

One of our investigators considered the details of the complaint and didn't uphold it. He set out why he didn't consider Virgin Money had acted unreasonably in its handling of the S75 claim, including by asking Mrs R to provide an independent report to support her dispute. He also set out why he didn't consider its request was at odds with the FCA's principles and Consumer Duty, which Mrs R had made reference to in support of her complaint.

Mrs R didn't agree with our investigator's view and asked for an ombudsman's review; so, the complaint was passed to me to decide.

I recently issued a provisional decision where I set out, with reasons, my initial thoughts on this case and what I was intending to decide.

The below is an extract from my provisional decision:

"The information in this case is well known to Mrs R and Virgin Money; and I've seen our investigator set out the S75 process and our service's approach to these cases within their correspondence with both parties. So, I don't intend to repeat this information here.

I've focused my decision on what I consider to be the key points of this complaint. While I may not comment on each individual point made or piece of evidence provided, I'd like to assure both parties I have carefully considered all of the information currently available to me. I don't mean to be discourteous to Mrs R or Virgin Money by taking this approach, but this simply reflects the informal nature of our service.

I've set out my current thoughts and how I'm intending to decide this case under separate headings for ease.

A chargeback claim

Mrs R raised concerns with Virgin Money as to why it didn't initially consider her claim through the Mastercard chargeback scheme.

Unlike a S75 claim, chargeback claims must be raised within a certain time period, and this depends on the individual card scheme operator's rules, and the dispute condition. In the details of Mrs R's case, I consider the relevant dispute condition would be 'Goods or services not as described or defective'. This dispute condition requires a chargeback claim to be raised within 120 days of the delivery date of the goods. I've seen nothing within the Mastercard chargeback rules that provide for a longer chargeback period relating to this dispute condition.

So, as Mrs R took delivery of the sofa in early 2021, she was outside of the 120 day timescale for raising a chargeback claim when she contacted Virgin Money in May 2024 to raise her dispute.

It therefore follows I consider Virgin Money acted reasonably by declining to raise a chargeback claim on Mrs R's behalf.

A S75 claim

S75 of the CCA says that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider, if there's either a breach of contract or misrepresentation by the supplier of the goods or services.

There are qualifying requirements to a S75 claim. In the individual details of Mrs R's dispute there must be a debtor, creditor, supplier (DCS) agreement; and the individual value of the goods or services in dispute must have a value of more than £100 but no more than £30,000.

I'm satisfied Mrs R's dispute meets the S75 qualifying criteria; as there's a DCS agreement between Mrs R (debtor), Virgin Money (creditor), and D (supplier). And the purchase price of the sofa was around £950, which is within the qualifying range.

So, for Virgin Money to be liable to refund Mrs R under a S75 claim, it needs to be satisfied there has been a breach of contract or misrepresentation in respect of the provision of the goods Mrs R received from D.

I've considered the implied terms of the contract Mrs R entered into, and relevant law which is the Consumer Rights Act 2015 (CRA). I've also considered the express terms provided by

D through its warranty, although I note this warranty only covered a two year period which had ended by the time of Mrs R's claim.

Having done so I'm not currently persuaded that there is evidence of a breach of contract.

I acknowledge Mrs R has provided documentary evidence by way of invoices and the insurance policy purchased at the point of sale, as well as pictures of her sofa at the time of the claim. However, I don't consider these provide sufficient detail to prove that the concerns Mrs R has raised with the quality of the sofa are due to a manufacturing fault, rather than a cause of general wear and tear over time.

As part of Virgin Money's investigation, it asked Mrs R to provide further information to support her claim. This included an independent report from an expert, providing details of the manufacturing quality of the sofa.

I don't consider Virgin Money's request for an independent report to be unreasonable. I say this because:

- *Virgin Money isn't an expert in this field.*
- *The sofa was around three and a half years old at the time of claim. Considering what the relevant law says (the CRA here) about evidencing inherent faults which arise at a later stage, I consider it fair that Virgin Money decided the burden of proof was with Mrs R to show that the sofa wasn't of satisfactory quality at the point of sale.*
- *Mrs R had not provided persuasive evidence otherwise to clearly show the sofa had a manufacturing defect or was not reasonably durable (as opposed to suffering usually expected wear and tear).*

From the evidence currently available to me it's not clear if Virgin Money had sight of the photos Mrs R has provided our service as part of its consideration of the claim. If it didn't, I think Virgin Money should reasonably have requested and considered alternative evidence before requesting an expert report.

But ultimately, I don't think Virgin Money would have come to a different conclusion here – as Mrs R would likely have provided it with the photos (if she hadn't already) and I don't consider they evidence an inherent defect.

So, in order to determine whether the interior fillings weren't springing back to their original shape within industry expected settlement, I don't consider it unreasonable that Virgin Money requested an independent report to be provided by an expert in this area.

Mrs R has said she considers Virgin Money's request for an independent report to be funded at her expense to be unfair. She's said she considers this request is in breach of the FCA's principles on treating customers fairly, and under the Consumer Duty.

I've carefully considered Mrs R's arguments here; and having done so, I'm not persuaded by them. I say this because when taking into account relevant law, good industry practice and relevant rules and regulations a business must follow, I must also consider what is fair and reasonable in the circumstances of each complaint I decide.

I acknowledge Mrs R has pointed out that the Consumer Duty means Virgin Money should act to deliver good outcomes for its customers. However, that doesn't mean it can't make a reasonable request for Mrs R to obtain information to support her claim. Or that a claim will always be upheld. I have already explained why the request for further information was not unreasonable here. And I don't consider the fact Mrs R might incur a cost for obtaining that

information changes that either – particularly noting that she might be due reimbursement for this extra cost if it supported the validity of her claim for breach of contract.

Mrs R has said Virgin Money hasn't provided any guidance or recommendations regarding companies qualified to provide such a report in a highly niche specialism. She's said through her own research she hasn't found what she considered to be reasonably priced providers, as each company has quoted her over £100.

I've seen the correspondence Virgin Money sent Mrs R in July 2024 setting out what evidence was needed to support her claim. This included "An independent expert report from a VAT registered company or a Sole Trader on a letter headed paper to prove it's a manufacturing fault." And within other communication Virgin Money suggested Mrs R may wish to contact The Furniture and Home Improvement Ombudsman, who it said should be able to assist in providing information for a report.

So, I can't fairly agree with Mrs R's statements that Virgin Money hasn't provided her with details as to potential providers of the required report; or where she could reasonably obtain further information or guidance on the matter.

After taking all of the above into account, I'm not currently persuaded that Virgin Money has acted unfairly in its handling of Mrs R's claim.

The associated insurance policy

Mrs R complained during the dispute and complaint process with Virgin Money about the sale of an insurance policy for the sofa. She says she was led to believe the policy would cover her for any issues relating to the interior of the sofa, including sagging of the cushions.

Mrs R raised a mis-selling complaint with D and G about this insurance product when she became aware it didn't cover her for the internal filling not springing back.

This complaint wasn't upheld but as a gesture of goodwill D offered to refund Mrs R the full cost of the policy, which was around £90.

Mrs R maintains her argument that the insurance was mis-sold when she bought the sofa, and that she wouldn't have purchased it had she known she wouldn't be covered for the internal fillings not springing back.

I've considered all of Mrs R's arguments relating to this part of her complaint, as well as our investigator's conclusions on this within their views.

Under Section 56 (S56) of the CCA a creditor can be liable for a like claim against a supplier for anything the supplier says or does before a purchase.

Mrs R has provided her testimony in which she's set out her recollection of conversations during the sale; and a letter from G stating that it can't be sure what conversations took place at the sale, which Mrs R considers supports her position.

But this insurance policy was provided on a non-advised basis. And in any event, Mrs R has pointed out herself that the paperwork she received confirms interior fillings not springing back within industry expected settlement isn't covered.

So, I can't be satisfied that misrepresentation can reasonably be concluded given the available evidence.

I've also thought about the usual redress direction a business would be required to take when a claim like this is upheld. This would be to put a consumer back in a position before any misrepresentation took place. So, likely redress if misrepresentation of the insurance policy was upheld under S56 would be to refund Mrs R the cost of the policy, rather than it carry out any remedial work needed that may have been suggested was covered by the policy.

D has already offered this redress, albeit under a gesture of goodwill approach as opposed to admitting any liability that the policy was mis-sold. But ultimately the outcome is the same.

Virgin Money's handling of Mrs R's claim and complaint

Mrs R complained to Virgin Money in early July 2024 about the timescales of its handling of her S75 claim. She said she considered it had been an unreasonable amount of time since she'd received any updates.

Virgin Money issued Mrs R with an eight week holding letter to her complaint in August 2024. This stated that it had been unable to investigate her concerns and provide her with an answer within its regulatory eight weeks, due to an 'unusually busy period'. The letter did set out Mrs R's rights to refer her complaint to our service for review now that the eight weeks had passed.

Virgin Money went on to issue Mrs R with its final response to her complaint in early September 2024, just over a week outside of its eight week regulatory obligation.

It set out that it considered its handling of Mrs R's claims was being progressed reasonably, and that it had requested information from her to progress the claims that were active at that time.

I've reviewed the timeline of events relating to this claim. I've seen contact notes which confirm the claim was acknowledged; and that further updates and information was requested within what I would consider a reasonable period of time. As such, I can't agree that Virgin Money unreasonably caused any delays to its assessment of this claim.

Virgin money did go on to acknowledge within its final response letter that it hadn't been able to provide Mrs R with a response to her complaint in a timely manner, and it offered £70 for any distress and inconvenience this may have caused.

I've considered Virgin Money's offer for the delay in answering Mrs R's complaint, and I consider it's reasonable in the circumstances. I say this because Virgin Money issued Mrs R with a holding letter within eight weeks of her complaint being made, advising her it wasn't in a position to provide her with its final response, and provided her with referral rights to our service.

I've seen it went on to issue Mrs R with a final response to her complaint a couple of weeks later, which was just over a week past its eight week regulatory obligation.

So, I consider the impact of the delay in its response was mitigated by how quickly it did go on to issue the final response letter; and in any event it had provided Mrs R with referral rights to our service within the eight week period.

I therefore consider £70 for the delay in responding to Mrs R's complaint is reasonable."

Virgin Money accepted my provisional decision; Mrs R didn't. In summary, she made further comments in relation to the Consumer Duty and what she considers is an unfairness on her

to provide an independent report to support her claim.

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.

Having done so, I've not been provided with any new information or evidence which leads me to conclude I should depart from the findings I reached within my recent provisional decision. I acknowledge this will be disappointing for Mrs R.

I say this because I'd already covered the comments Mrs R has provided around the Consumer Duty, and the obligations on Virgin Money under it, within my provisional decision.

As I set out within the provisional decision, the Consumer Duty doesn't stop Virgin Money from making reasonable requests to a customer to obtain and provide evidence to support a claim. And I set out within my provisional decision why I considered Virgin Money's request for an independent report was reasonable in the individual circumstances of Mrs R's claim; especially as she might be reimbursed for this cost if it supports her claim for a breach of contract.

The evidence I've considered which I set out within my provisional decision also showed Virgin Money had provided Mrs R with the details of who she could obtain a report from; and details of an organisation she could contact who should be able to assist her further with information relating to the report, should she need it.

So, it therefore follows, for the reasons I've set out above and within my provisional decision, I don't consider Virgin Money has acted unreasonably in its handling of Mrs R's S75 claim.

Virgin Money identified failings in its handling of Mrs R's complaint and offered her £70 for this, which I still consider to be reasonable in the circumstances, given the reasons set out within my provisional decision.

Putting things right

For the reasons set out above, Virgin Money should pay Mrs R £70 for the failings it identified in its customer service.

My final decision

My final decision is that Clydesdale Bank Plc trading as Virgin Money should pay Mrs R £70.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 2 September 2025.

Richard Turner
Ombudsman