

The complaint

Miss A complains that Virgin failed to properly consider her claim under section 75 Consumer Credit Act 1974 ("s.75") and failed to make a chargeback.

What happened

In April 2024 Miss A arranged for her vehicle to be taken to a garage ("the merchant") a considerable distance away to be repaired. The merchant informed her that a replacement engine was needed. She paid an initial £1,200 and a little later a further £1,300. Miss A chased up the merchant and some six weeks later the vehicle was ready for collection. However, she was then told that the electronic control unit ("ECU") wasn't working which meant the vehicle wouldn't start.

When she collected the vehicle she challenged the merchant, but it would not let her have it until she paid the full amount due. In total she paid the merchant £4,155. She has explained that there was no problem with the ECU prior to the vehicle being worked on by the merchant. Miss A took the vehicle to a specialist which said: "They have come to the conclusion that the vehicle will require a ecu. All relevant powers, grounds and networks at ecu are present and correct. We did find some patchy wiring where someone has had a go previously at repairing but it is not the root cause of the problem." It also said that the ECU had suffered extensive water damage within itself. A new ECU cost £1,622 and so the vehicle was sold for scrap for the sum of £650.

The merchant has said that it installed the replacement engine and it noted the vehicle didn't sometimes want to start so it sent it to a specialist which did some work on the wiring loom, but the ECU was dead. It offered to defer the start of the engine warranty and pay £100 towards the cost of delivery of the vehicle. I have not seen any evidence of this from the specialist used by the merchant.

Miss A has provided evidence of many other customers who say they have been defrauded by the merchant and details of the owners being charged with numerous counts of fraud in relation to another garage they ran. The case has not yet been brought to court and the men deny the charges.

Miss A contacted Virgin which concluded a chargeback was not merited. It also explored whether there was a valid claim under s.75 and decided that there was insufficient evidence of either a breach of contract or misrepresentation.

Miss A brought a complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. He concluded that there was not enough evidence that the fault to the ECU had occurred while the vehicle was in the possession of the merchant. Miss A didn't agree and supplied more evidence and arguments.

I issued a provisional decision as follows:

"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 that 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 also want to assure Miss A that I've reviewed everything on file. 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.

There were two routes available to Miss A to obtain a refund, Chargeback is one of these. It is a voluntary scheme run by the card scheme operator to process settlement disputes between the card issuer (such as Virgin) – on behalf of the cardholder (Miss A) – and the merchant. It is not a legal right that the cardholder has.

The scheme operator sets the chargeback rules and time limits for transactions made using the card scheme. And it is the scheme operator that decides whether a chargeback is successful – the card issuer simply makes a request on the cardholder's behalf. If the card issuer knows it is out of time, or is unlikely to succeed, I wouldn't necessarily expect it to raise a chargeback.

In this case it is clear that the merchant would have defended a chargeback and its chances of success would have been slim. As such I do not consider it was wrong of Virgin not to pursue one.

The second route was a claim under s.75. This legislation offers protection to customers who use certain types of credit to make purchases of goods or services. Under s. 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services, if there has been a misrepresentation or breach of contract on the supplier's part. For s. 75 to apply, the law effectively says that there has to be a

- Debtor-creditor-supplier agreement and*
- A clear breach of contract or misrepresentation by the supplier in the chain.*

Our role isn't to say if there has been a breach of contract or a misrepresentation for a valid claim under s. 75 but to consider if Virgin has come to a fair outcome based on the evidence it was provided. I am satisfied the required agreement is in place and so I must consider if there has been a breach of contract or misrepresentation.

It does not appear that there is any misrepresentation here, but there does appear to be a breach of contract. In considering the evidence I have reviewed I would say that I have found Miss A to be both credible and consistent in her testimony throughout the pursuit of her claims and her complaint. As such I consider it reasonable to place significant reliance on what she has told both Virgin and this service. I do not consider I can place the same reliance on the claims made by the merchant.

The question which needs to be considered is whether there is sufficient evidence to show that the vehicle did not suffer from a faulty ECU prior to being taken to the merchant. Miss A has confirmed it did not and she has provided recordings of conversations with the merchant which includes comments from a third party which Miss A has confirmed was the tow truck driver to say that the vehicle had been running fine before it was taken to the merchant.

I also consider that if the merchant had been carrying out the repair work with the required skill and care it would have noticed an issue with the ECU before installing a replacement engine. The merchant's argument is, in essence, that the vehicle had this problem before it took delivery of it. If that is the case it begs the question why proceed with the work on the engine if the ECU was damaged. As I have noted above the ECU is a very expensive part and if Miss A had been informed of this she would most likely have decided not to proceed with the work.

I also note that Miss A has told us that the merchant sent her a video of the engine running in the vehicle on 13 May, but this along with all its other WhatsApp messages has been deleted. I would add that I have seen the trail of messages with most of those emanating from the merchant deleted. If the ECU was dead as claimed by the merchant how did the vehicle run on 18 May? Even if, as claimed by the merchant the fault was intermittent they were clearly aware there was a fault since they apparently engaged the services of a specialist to look at it.

Miss A has also pointed out, backed up by video evidence that other vehicles were left out exposed to the elements without the engines properly covered. The wider evidence of others indicates that the merchant did not run a professional establishment and so it is a reasonable conclusion that the lack of proper care of the vehicle while with the merchant led to the damage to the ECU.

Miss A has also pointed out that to diagnose the engine problem, which was a bottom end failure, the merchant would have had to have the engine running. This would indicate that the ECU was in a satisfactory condition when the vehicle was delivered to the merchant.

When all the evidence is taken together, I consider it most likely that the merchant failed to carry out the agreed work with proper skill and care. I believe it follows that the claim under s.75 should be upheld.

Miss A has also expressed some concerns about the way Virgin handled her claims. She was experiencing some considerable personal challenges at the time and did not feel supported by the bank. I think there were some delays, but nothing so significant as to be unacceptable. However, I consider Virgin could have explored her case in a more rigorous way and could have reached a different conclusion if it had done so. I believe compensation of £100 is merited.”

Miss A accepted my provisional decision and said she had further evidence of poor work carried out by the merchant. Virgin did not agree and said the audio recording was not clear and I probably relied on Miss A's transcript. It added that the third party said the vehicle was running, but it was suffering from an ECU failure? It believed the merchant had only agreed to fit a reconditioned engine and not a diagnosis of the ECU. It noted that not all the evidence had been presented to it and the last evidence of the engine running was 13 May.

Virgin said that there was no evidence of the car being exposed to the elements and our investigator had reached a different conclusion. Finally, Virgin argued that if the complaint was upheld it should only be liable for the cost of installing a new ECU, tow costs and diagnosis costs which totalled £2,630.40 as the merchant confirmed the warranty would begin once the issue was fixed.

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 have noted the comments from Virgin and I remain of the view that this complaint should be upheld. I will explain why.

When the evidence is incomplete, inconclusive or contradictory as some of it is here – I've reached my outcome on the balance of probabilities – that is, what I consider likely to have happened given the available evidence and the wider circumstances.

As I explained in my provisional decision I find Miss A's testimony to be credible, being

backed up, where possible, by documented evidence including recordings. She has set out the detail of her claim and complaint on a number of occasions and these have been consistent throughout.

I agree that the audio recording is not clear at all times. It is lengthy and there are many distortions. However, aided by the timeline supplied by Miss A and some diligence on my part I am satisfied that Miss A's summary of the events when she collected the vehicle are accurate.

The vehicle had a bottom end failure which meant a new engine was required, but that does not mean it could not be driven. The advice is not to drive it as that could cause more damage but after a short drive on 6 April the vehicle was loaded on to a tow truck and taken to the merchant. As Miss A has pointed out the tow truck driver confirmed the vehicle was running at this point.

There are two possibilities, either the ECU was faulty before the vehicle was delivered to the merchant or that the ECU suffered a fault while it was with the merchant. If the vehicle had a faulty ECU one wonders why the merchant proceeded with an engine replacement for a vehicle which had a fundamental issue and which made the repair it carried out pointless?

The alternative is that the fault occurred while in the possession of the merchant. The circumstantial evidence indicates that the merchant was less than careful with how it looked after vehicles in its possession and so I consider it is likely that the ECU suffered the damage after delivery. There was an obligation on the merchant to ensure the vehicle was looked after properly. I do not believe it did.

I agree that the terms set out by the merchant do not refer to the ECU. I would not expect them to. There was no evidence of an ECU issue when the vehicle was delivered to the merchant. The merchant said the vehicle was running on 13 May, long after it had been delivered to it which undermines its claim that the ECU was faulty before delivery on 8 April. It seems more likely that the fault arose while the vehicle was in the merchant's possession.

In short, Miss A took her vehicle which had a functioning ECU to the merchant and when she went to collect it after significant delays by the merchant the ECU was not working. The cause according to the independent garage is that it suffered water damage. I am satisfied that the merchant did not take proper care of the vehicle and so there was a breach of contract.

As for redress I do not think the proposal put forward by Virgin reflects the financial situation faced by Miss A. She paid £4,155 to the merchant and was left with a vehicle which had to be scrapped. I do not consider it fair to restrict the redress to the cost of a new ECU. I am satisfied that the vehicle was no longer of any use to her as a result of the actions of the merchant and so she should be refunded the money she paid out to it. Incidentally, I note that the merchant company appears to have been dissolved so any guarantee it offered would have been of no value.

Putting things right

I consider Virgin should:

- Pay Miss A £4,155 being the sum she paid to the merchant.
- Pay Miss A £180 to cover the cost of the towing of the vehicle
- Pay Miss A £504 for the diagnostic cost.
- Pay simple annual interest of 8% on the above from the dates paid until redress is paid to her.

- Pay Miss A compensation of £100 for the distress and inconvenience she suffered.

My final decision

My final decision is that I uphold this complaint and I direct Clydesdale Bank Plc trading as Virgin Money to pay Miss A redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 17 November 2025.

Ivor Graham
Ombudsman