

complaint

Mr C complains that Virgin Money plc won't refund to him the money that he paid for a pond pump. He also complains about the service that he's received from Virgin Money.

background

Mr C used his Virgin Money credit card on a Thursday in August 2016 to pay £86.99 to a supplier for a pond pump. He says that he expected next day delivery but the pump wasn't delivered until the Monday – four days later. So he complained to Virgin Money and asked for a refund either under section 75 of the Consumer Credit Act 1974 or as a chargeback. He wasn't satisfied with Virgin Money's response so complained to this service. He also complained about the service that he's received from Virgin Money.

The investigator didn't recommend that this complaint should be upheld. She said that:

- as the value of Mr C's transaction was less than £100, she didn't think that Virgin Money was wrong to decline his section 75 claim;
- as Mr C's order was placed after 1pm on the Thursday, the expected delivery date was the Monday which was the day the pump arrived - so she didn't consider that there were reasonable grounds for Mr C to make a successful claim under the chargeback scheme; and
- she didn't think that Virgin Money had treated Mr C unfairly.

Mr C has asked for his complaint to be considered by an ombudsman. He has responded in detail and says, amongst other things, that:

- if the pump wasn't delivered the next day (Friday), it should've been delivered on the Saturday;
- the supplier didn't provide the goods and services in line with that described on its website so a chargeback claim exists; and
- he considers that, from information provided by Virgin Money, his section 75 would've been successful if the price had been more than £100.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier. But section 75: *"...does not apply to a claim ... so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 ..."*. Mr C paid a price of £86.99 for the pump – but section 75 only applies to items with a price of more than £100. So Mr C's purchase of the pump isn't covered by section 75 – and his claim to Virgin Money for a refund under section 75 can't succeed.

If the price of the pump had been more than £100, Mr C would've been able to make a claim under section 75 – but he would then need to show that there had been a breach of contract or misrepresentation by the supplier. But as Mr C can't make a claim under section 75 in these circumstances, I haven't considered his section 75 claim further.

There is no right for a consumer to require that a chargeback claim be made. But if the right to make a chargeback claim exists under the applicable scheme rules – and if there is a

reasonable prospect of success – I consider it to be good practice for a chargeback claim to be made.

There doesn't seem to be any dispute that Mr C's order was made after 1pm on the Thursday. The supplier's website says: *"Delivery is direct to your door from our warehouse and all orders are placed on a next working day service. We endeavour (and achieve a 99% success rate) in delivering all orders placed before 1pm on the next working day"*. I consider that *"next working day"* delivery for Mr C's order would've been on the Monday – which was the day that he received his pump. Many organisations don't consider Saturday to be a working day for these purposes – and there's no evidence to show that Mr C was told that his order would be delivered on the Saturday. So I consider it to be fair and reasonable that Mr C's pump was delivered on the Monday. I don't consider that it was a term or condition of Mr C's order that the pump would be delivered the next day – and the supplier gave no guarantee of next day delivery. So I'm not persuaded that the supplier has done anything wrong. I consider that there was no reasonable prospect of a successful chargeback claim in these circumstances – so I find that it wasn't unreasonable that Virgin Money didn't make a chargeback claim.

I consider that Virgin Money has dealt with Mr C's complaint correctly and within appropriate timescales. So I don't consider that his complaint about the service that he's received from it should be upheld. For these reasons, I find that it wouldn't be fair or reasonable for me to require Virgin Money to refund the cost of the pump to Mr C – or to take any other action in response to his complaint.

my final decision

So my decision is that I don't uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 March 2017.

Jarrold Hastings
ombudsman