

## **complaint**

Mr H complains that Virgin Money plc unfairly refused his claim brought under Section 75 of the Consumer Credit Act 1974. He wants a refund of monies paid and compensation.

## **background**

Mr H is represented in this complaint by a family member, Mr R, but for ease of reading I'll just refer to Mr H.

Mr H tells us that after his vehicle broke down in July 2016 he took it to a garage which I'll call "A", a company. He says A diagnosed that an engine rebuild was necessary which Mr H says he authorised. After the repairs were seemingly completed, Mr H says he was invoiced by A for the rebuild which he paid for by credit card. Some weeks later he says A also fitted a new turbo as the engine had lost power - but this didn't solve the issue. Following a vehicle inspection by a different garage, a firm I'll call "M", Mr H says that M told him the original engine had been replaced not rebuilt. Mr H says that the original repairs were misrepresented and/or in breach of contract and he wants a full refund and compensation.

Virgin issued a final response letter in November 2018. It said that it hadn't received an independent engineer's report to show there was anything wrong with the engine or that it was suffering a lack of power.

Our adjudicator recommended the complaint should be upheld. He said he thought Virgin ought to have noted the breach of contract as A had replaced the engine not rebuilt it as required. He said it should refund the cost of the replacement engine and turbo and pay £300 to Mr H as compensation for distress and inconvenience in its handling of the complaint.

Virgin didn't agree with this outcome. It told us it had no documentary proof that Mr H asked for the engine to be rebuilt not replaced. And it said A had replaced the engine as it wasn't repairable. As it's not been possible to resolve this complaint an ombudsman's been asked to make the final decision.

## **my findings**

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

I'm sorry that Mr H experienced problems with this vehicle and that the subsequent attempts to repair it caused him even more difficulties.

Mr H's complaint is brought under section 75 and is against Virgin so I'm looking at its actions and whether it's treated Mr H fairly. I'm not deciding on the merits of any claim he may have against A. Although in deciding if Virgin's handled Mr H's complaint properly I'll take this into consideration.

Whilst I don't apply the law directly I do take it into account. And section 75 is relevant legislation here. And where information is unclear or incomplete - as some of it is here - I'm required to make my decision on the balance of probabilities.

Briefly summarised, section 75 says that where a consumer uses certain types of credit - and that includes a credit card - to purchase goods and/or services and there's a misrepresentation and/or breach of contract by the supplier (in this case A), the consumer will have a "like" claim against the provider of finance (Virgin) as they would against the supplier. There are other conditions but it's not disputed they're met in the circumstances of this complaint.

A misrepresentation is a false statement of fact which induces a consumer to enter an agreement and as a result of the misrepresentation to suffer a loss. And a breach of contract might occur if goods weren't of satisfactory quality at the time of supply. Or if services weren't carried out with reasonable care and skill.

There initially seemed to be contradictions in the information regarding what happened at the time of the original repairs. But as things have progressed it's now become a lot clearer as to what's actually taken place.

I've seen an invoice dated 2 August 2016 from A. This refers to an engine rebuild and the various parts that had been required. The invoice total came to £2,685. And Mr H's credit card statement shows it was paid the same day. And on 4 October 2016 Mr H's credit card statement shows a further payment of £400 to A, which I understand was for the turbo.

Mr H first complained to Virgin on or around 13 October 2016. And later supplied a letter from M dated 10 November 2016 which stated that the work detailed on A's invoice hadn't been carried out and that this could be proved as the engine numbers on the registration document didn't correspond to the engine fitted in the vehicle.

A wrote to Virgin on 2 January 2017 confirming that it'd replaced the engine with a recently rebuilt engine which it said had cost it more than its quote to Mr H. It said it'd done so as it had a timescale to repair the vehicle and had acted in good faith. It's not a matter for me to determine if A's actions were well intended. And whether or not the cost of the replacement engine it acquired was greater than it charged Mr H is not really the issue. Mr H was given an invoice which falsely described the work that had been carried out. And I can't see any plausible reason why A couldn't have told Mr H that his vehicle wasn't repairable *before* it sourced the replacement engine. Mr H would then have had the correct information on which to decide if he wanted to proceed or not.

I think Virgin ought reasonably to have recognised there'd probably been a breach of contract. It was no longer in dispute that the goods and services for which Mr H had been invoiced on 2 August 2016 hadn't been provided. And there was also reason to believe that the replacement engine wasn't of satisfactory quality as the turbo required replacing soon after the engine was fitted. Virgin might have thought the replacement engine provided by A was a suitable alternative but it was not what Mr H paid for. The subsequent issue that Virgin raised about whether the vehicle was experiencing a loss of power doesn't seem to me to be of relevance as by then any breach of contract had occurred.

I note that Mr H originally submitted a claim for compensation totalling over £14,000. This included losses he says were consequential upon the breach of contract. In order for such losses to be recoverable they have to be not only a direct result of the breach but they must also be reasonably foreseeable. And some of the additional losses claimed by Mr H relate to purported losses to his business. The repairs invoice was made out in Mr H's personal name and paid for through his personal credit card. As Mr H's business is a limited company it's a separate legal entity. And as it's not a party to this complaint I can't make any award to it.

Also a claim for the original cost of the motor vehicle (£3,800) cannot be justified. Clearly that cost included the original engine which subsequently failed. So Mr H can't reasonably expect to recover the cost of both the replacement engine and the original vehicle.

I note also that Mr H has sought £5,000 compensation for various alleged failures by Virgin and the distress and inconvenience this has caused him. Compensation isn't intended to punish a business rather it's to offer some recompense to a customer if a business has failed to meet reasonably expected standards. I don't doubt Mr H has experienced inconvenience but most of this arises from the actions of A. And Virgin is only liable for those actions of A which amount to a breach of contract and/or misrepresentation.

I feel the award of £300 recommended by our adjudicator is commensurate with the inconvenience caused by the delay in Virgin's handling of this matter. It seems to me that from January 2017 (A's admission) it had sufficient information that should have led it to find there'd been a breach of contract and to take action to credit Mr H's account with the relevant amounts.

In summary, I'm upholding this complaint as I find that Virgin should've accepted that a breach of contract had occurred and that Mr H had suffered a loss as a result.

### **my final decision**

For the reasons given above my final decision is I'm upholding this complaint.

In full and final settlement of this complaint I now require Virgin Money plc to take the following action:

1. Refund any payments made towards the total cost, up to £3,085. Any interest paid on such amounts should also be refunded. Simple interest on any payments should be made at the rate of 8% per year from date of payment to date of settlement;
2. Make any necessary adjustments to Mr H's account by applying a credit for any unpaid balance relating to the above. Any interest paid on this amount should be repaid;
3. Pay £300 to Mr H for distress and inconvenience;
4. Upon proof of payment refund the cost of M's inspection together with simple interest at the rate of 8% per year from date of payment to date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 11 March 2020.

Stephen D Ross  
**ombudsman**