

The complaint

Mr S is unhappy that Clydesdale Bank plc (trading as Virgin Money) will not refund him for a hotel booking he made using his credit card.

What happened

Mr S used his Virgin Money card to pay the deposit for a hotel room in the USA. However, due to the Covid-19 pandemic his flight was cancelled, and he was unable to make use of the hotel room.

Mr S contacted the travel agent ('the supplier') he paid for the booking. It discussed moving the dates but said as the service was still available Mr S would lose his deposit if he chose to cancel.

Mr S was unhappy with the supplier's proposal, so he made a claim with Virgin Money. It didn't agree to provide a refund, so he complained to it then referred the matter to this service. Mr S wants his money back and says he has suffered material stress and inconvenience.

Our investigator did not uphold the complaint. He didn't think Virgin Money was acting unfairly by not providing Mr S with a refund. In summary, he said because the hotel was open and able to provide the service:

- there was no valid ground for a successful chargeback; and
- the supplier had not breached its contract with Mr S, so Virgin Money is not fairly liable to refund him under Section 75 of the Consumer Credit Act 1974 ('Section 75').

Mr S disagreed and thought the outcome was unfair. In summary, he says

- even though the hotel was open he was clearly unable to use it through no fault of his own and he should be protected through his credit card;
- Virgin Money has not treated him fairly in accordance with the conduct requirements as laid down by the FCA including the requirement that firms pay due regard to the interests of customers and treat them fairly;
- the decision to not refund him is not a positive outcome for customers or in the spirit of the regulations due to the unprecedented situation caused by the pandemic; and
- Virgin Money did not do a good job of dealing with his claim or subsequent complaint.

I wrote to Mr S to give him my initial thoughts on the matter and expand on some of the things the investigator had discussed. I invited him to make any further comments.

Mr S responded to my initial thoughts on the matter. He says, in summary:

- Virgin Money's defence relies on the fact the hotel was open, but it wasn't possible for him to use the service;
- Virgin Money's decision is not in the 'spirit of the regulation' and the rules were not

written to cover the specific circumstances of the pandemic;

- Virgin money has not acted with integrity, due skill, care and diligence, or their customers best interests and FCA requirements have not been met including Principle 6; and
- the consumer is being deprived of money despite the unprecedented times during the pandemic.

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 carefully considered what Mr S has said including his more recent submission. My understanding is Mr S feels very strongly that he should not lose money as a result of something he had no control over. He has stressed how he had no alternative not to travel and the supplier he paid for the hotel has not deviated from its own terms and conditions despite the extraordinary circumstances. He questions how this is his fault and why as a customer of a regulated entity such as Virgin Money he should suffer financial detriment.

I can see why Mr S feels this way, although it is important I emphasise why Virgin Money is involved here. It is not a supplier of travel services so any liability it has for the agreement between Mr S and the supplier is limited to the specific card protections which are available. In this case chargeback and Section 75.

Mr S has mentioned the regulatory requirements as laid down in the FCA handbook. I have taken into account what he has said and the rules and guidance he has referred to. However, when considering the requirements around treating customers fairly I also need to consider the context here, which is based on Virgin Money's responsibilities as dictated by the specific requirements of the chargeback scheme and Consumer Credit Act 1974.

Chargeback

The chargeback scheme is one way which Virgin Money might have been able to recover funds for Mr S. However, Virgin Money is limited by the particular scheme rules that apply here as laid down by the provider of said scheme. I have considered the scheme rules and relevant supplementary guidance published in light of the Covid-19 pandemic in order to decide if Virgin Money has treated Mr S fairly.

Virgin Money appear not to have raised a chargeback for Mr S. While it isn't entirely clear why, this appears to be because there is no valid dispute reason in the scheme rules in this case because:

- the hotel was still open and willing to provide the service; and
- in these circumstances deposits are non-refundable under the supplier's cancellation policy.

With this in mind, even if Virgin Money had decided to pursue a chargeback – it would not likely have succeeded. So I don't think it was unreasonable for it to not raise the chargeback here. I know the situation involved Mr S not using the service due to Covid-19 related travel cancellations but the supplementary pandemic guidance set out by the scheme operator is clear this does not result in chargeback rights as the hotel has fulfilled its own obligations.

The scheme rules are not something which Virgin Money has set out and it can't change these. So while this is no doubt frustrating to Mr S who had his flights cancelled I am unable to fairly conclude that Virgin Money should refund him because of how it approached a

possible chargeback.

Section 75

Section 75 can allow Mr S to hold Virgin Money responsible for breach of contract or misrepresentation by a supplier paid by credit card in respect of goods or services purchased. There are certain criteria that need to be met for Section 75 to apply, relating to the parties to the transaction, the way the payment was made and the price of the goods or services. I am satisfied these have been met so I have moved on to consider the substance of any potential Section 75 claim.

The supplier here for the purposes of Section 75 is the travel agent which received payment for the service. I have considered the contract between Mr S and said supplier and whether there has been a breach of contract in the circumstances.

Here it appears the supplier had not cancelled the contract as the hotel was still open and willing to provide the service, so I turn to the other relevant terms. The terms and conditions that relate to customer cancellation state the deposit is non-refundable. Furthermore, there is nothing to indicate that Mr S booked the type of flexible room that would enable him to cancel without incurring a cost. So in not providing a refund to Mr S the supplier has not breached its contract with him. I also see no grounds for a claim relating to misrepresentation either.

From what Mr S has said I don't think he is disputing the supplier's terms and conditions don't entitle him a refund. But he points to the exceptional circumstances around the pandemic and why there should be more flexibility here. I do understand this point but in deciding if Virgin Money has acted fairly I am assessing the limited scope of its liability via Section 75 for the actions of a third party. Because there is no breach of contract or misrepresentation by the supplier, with Section 75 in mind it is not fair and reasonable for me to say that it should be responsible for refunding Mr S.

In conclusion:

I know Mr S has indicated that he has been made to feel at fault, but my decision not to award a refund of the deposit against Virgin Money does not mean he has done anything wrong. I can see the circumstances were out of his control and I can also see why he feels so upset about losing out. While I have carefully considered what Mr S has said about the FCA requirements to treat customers fairly Virgin Money is not the supplier of services here so the fairness of directing it to issue a refund has to be considered in light of the chargeback scheme rules and guidance and its potential liability under Section 75. Despite the overall unfairness of the situation resulting from the global pandemic – this in itself does not mean that Virgin Money is at fault here.

I note Mr S has also explained that he was unhappy with how Virgin Money handled his claim and subsequent complaint about the outcome. However, from what I have seen – despite some confusion with how to submit forms overall the service he received in the circumstances does appear to have been reasonable. The response to his claim was given relatively promptly and although the final response did not address all of his questions I don't think this would warrant an award of compensation here.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or

reject my decision before 18 August 2022.

Mark Lancod
Ombudsman