

## **The complaint**

Mr G complains about the way Clydesdale Bank Plc trading as Virgin Money dealt with his attempts to recover money he paid for a holiday that didn't go ahead due to the Covid-19 pandemic.

## **What happened**

Mr G paid a deposit to "B", a holiday company, for accommodation abroad. He used his Virgin Money MasterCard credit card to make payment. The week before Mr G was due to travel, the country he was due to visit closed its borders in an effort to contain the Covid-19 pandemic. Mr G made enquiries of B in respect of getting a refund of his payment. B responded setting out its standard cancellation policy, and in light of the circumstances offering Mr G the option to rebook later in the year.

Unhappy with B's stance, Mr G turned to Virgin Money to see whether he could recover his money that way. Virgin Money said that because B had set out the cancellation terms in the booking agreement and that this hadn't been adhered to, it had no grounds to claim back the money via the MasterCard chargeback scheme. Virgin Money also said it was unable to progress a claim under section 75 of the Consumer Credit Act 1974 ("section 75").

Mr G didn't receive Virgin Money's reply until the deadline for response had passed. When he contacted Virgin Money about its decision, it told him he couldn't appeal against it. Mr G complained to Virgin Money, who acknowledged some service shortcomings and credited Mr G's account with £50 in respect of these. It told Mr G that it would consider his claim further if he provided additional evidence, and said if he remained unhappy he could refer matters to our service. He duly did so.

Our investigator found that in addition to closing its borders, Mr G's intended destination had entered an effective lockdown, meaning it was unlikely B would have been able to provide the accommodation under the contract. The investigator noted Mr G hadn't cancelled the booking, so he thought it likely that Mr G would have been entitled to receive his money back via chargeback. Because Virgin Money had declined to process what appeared to be a valid claim, the investigator recommended that it compensate Mr G by refunding him what he'd paid with interest, along with the £50 it had already paid for its acknowledged poor service.

Mr G said he was happy with this proposal. However, Virgin Money hasn't responded within the timescale given by the investigator, despite us giving it additional time to do so. Consequently matters have been passed to me for review and determination.

## **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'm satisfied Mr G didn't cancel the agreement with B, and that the underlying circumstances that prevented Mr G from travelling to his destination also prevented B from providing the accommodation as booked. The emails between the parties merely clarify the cancellation

policy and alternative options. They don't suggest Mr G acted to terminate the agreement. Rather, the lockdown imposed by the government in the destination country permitted only essential services and economic activity, which didn't include leisure accommodation of the type B offered. Because the accommodation couldn't lawfully be provided the contract looks like it was frustrated.

Where a contract is frustrated – that is, unforeseen circumstances have made it impossible to perform – the usual legal remedy is that the parties are released from their contractual obligations. In such circumstances B wouldn't be obliged to fulfil Mr G's booking, and he would be restored to his original financial position by having his money back.

As the investigator noted, such an event gives rise to a valid chargeback claim. That appears to be supported by MasterCard guidance issued in May 2020 and available to Virgin Money at the time it was dealing with the chargeback claim. The guidance says

*“Question: The cardholder prepaid for services (e.g. flight or hotel reservation) and the cardholder was notified that the merchant will not be able to provide the services. No refund has been processed. Does an issuer have chargeback rights?”*

*Answer: Yes. There is a chargeback right when services are not provided, including when they are cancelled by a merchant due to government restrictions, insolvency or other exceptional circumstances, unless the merchant has a right to provide the cardholder with reasonable alternatives based on the terms and conditions properly disclosed to the cardholder at the time [of] purchase, or based on applicable government legislation or regulation.”*

Whether the alternative B proposed was reasonable is a moot point, given that it was an alternative B put forward when it was realised the booking couldn't go ahead rather than at the time of purchase. I've seen nothing to suggest the booking terms permitted such an alternative, or any government legislation or regulation made by the destination country that imposed such an alternative.

With this in mind, like the investigator I find that there was a valid chargeback right, and that by failing to pursue a claim on Mr G's behalf Virgin Money treated him unreasonably and to his detriment. I further find that the appropriate way to address that poor treatment and detriment is for Virgin Money to reimburse Mr G his payment of £477.81, along with interest at 8% simple to reflect the fact he's been out of pocket over time. I'm satisfied Virgin Money's £50 payment is reasonable to address the other service shortcomings and make no further award in this respect.

### **My final decision**

For the reasons I've set out here, my final decision is that I uphold Mr G's complaint. To settle it, Clydesdale Bank Plc trading as Virgin Money must, within 28 days of receiving his acceptance of this decision, take the following steps:

1. pay Mr G £477.81, representing the amount he paid as a deposit for his booking
2. pay interest on the amount in 1. calculated annually at 8% simple, from 4 August 2020 (being the date Virgin Money issued its response to Mr G's claim) until the date it pays this settlement. If Virgin Money deducts tax from this interest, it should provide Miss S with an appropriate tax certificate

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 24 August 2022.

Niall Taylor  
**Ombudsman**