

The complaint

Mr P is unhappy how Clydesdale Bank Plc trading as Virgin Money (Virgin Money) have handled his request for help to recover money following the cancellation of hotel accommodation.

What happened

In February 2020 Mr P booked a hotel stay for seven nights abroad using a travel merchant, who I'll refer to as O. He paid a total of £554.92 using his Virgin Money credit card. The stay was scheduled to start on 22 April 2020.

In mid-March and early April 2020 Mr P emailed O and cancelled his booking due to the COVID-19 pandemic. His booking confirmation confirmed he would be entitled to a full refund if he cancelled the accommodation before 14 April 2020, so he didn't think he'd have a problem receiving his money back. But despite several emails to O over the course of the next couple of months, he never heard from them.

Because O weren't responding, Mr P asked Virgin Money to help recover the money. This was in May 2020. Virgin Money sent him a dispute resolution form to complete, which Mr P returned a couple of weeks later. Virgin Money wanted more information from Mr P and asked him to send it through to them. At this time, they gave Mr P an email address to send the information to. As Virgin Money hadn't heard from Mr P by 23 July 2020, they declined his chargeback claim and wrote to him to let him know. In their letter to Mr P, Virgin Money also said they'd considered Section 75 (S75) of the Consumer Credit Act 1974 (CCA) but didn't feel it applied as they couldn't identify a breach of contract or misrepresentation from the supplier.

Unhappy with this, Mr P contacted Virgin Money in early August 2020 to raise a complaint. He said that he had sent the information across but had difficulty using apps and email and couldn't attend a branch as he was shielding during the pandemic. It transpired that Mr P had incorrectly entered the email address when responding to Virgin Money's request for additional information, so the information had never been received by them.

Mr P brought his complaint to our service. Our investigator sent the information across to Virgin Money and asked them to reconsider the S75 claim. Virgin Money responded to say a chargeback claim was now out of time, and a S75 claim wouldn't be valid as the debtor-creditor-supplier (DCS) relationship had been broken because Mr P had used O to facilitate his booking. Our investigator considered this and decided to uphold the complaint. She said she felt the DCS relationship was in place because O had told Mr P he could cancel for free until 14 April 2020 on his booking confirmation, and O's terms and conditions state that all cancellation requests must be made to them. So, our investigator said O had set the cancellation terms and would be responsible for a breach of contract relating to them. In addition, our investigator said she also felt Virgin Money had enough information from the outset to raise a chargeback claim for Mr P. She said Virgin Money had sufficient information on the dispute resolution form and from a phone call with Mr P on 4 May 2020 to raise the chargeback at that time.

Because of this, our investigator said Virgin Money should refund Mr P the total amount of £554.92. She also said they should pay 8% simple interest on that amount from the end of July 2020 until the date they settle, to reflect the fact Mr P has been out pocket for some time.

Despite several attempts to make contact, Virgin Money have not responded to our investigator's view.

As Virgin Money haven't responded, it's been passed to me to decide.

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.

When considering what is fair and reasonable, I'm required to take into account: relevant laws and regulations, relevant regulatory rules, guidance and standards and codes of practice.

Chargeback

There are different ways that a bank can assist customer who have had issues with goods or services not being provided. In some cases, a bank may be able to request a refund from the supplier through the chargeback scheme. This is a way in which payment settlement disputes are resolved between cardholders and suppliers/merchants. They are dealt with under the relevant card scheme rules, in this case that's Mastercard. In certain circumstances the process provides a way for Virgin Money to ask for a payment Mr P made to be refunded.

There are no obligations for a card issuer to raise a chargeback when a consumer asks for one. But I would consider it good practice for a chargeback to be attempted where the right exists and there is a reasonable chance of success.

When a chargeback is raised, the scheme allows a given period of time – usually around a month – for the supplier to reply to say whether or not they agree to the refund. And when a supplier does defend a chargeback; this can lead to further representations by the cardholder's bank. The process then allows for further representations to be made if parties do not agree for the issue to be decided by the scheme in a process known as arbitration.

In Mr P's case Virgin Money didn't raise a chargeback when he contacted them in early May 2020 and sent them his completed dispute resolution form at the end of May 2020. They have said they needed some additional information to enable them to raise the chargeback, and they never received this from Mr P.

The Mastercard scheme rules from the time Mr P raised his request with Virgin Money would suggest that the chargeback reason '*Credit Not Processed*' would have been the most appropriate in these circumstances. And the rules go on to say that a letter, email, message, or dispute resolution form are acceptable for the chargeback to be raised provided it provides sufficient detail to enable all parties to understand the dispute. I'm satisfied that the dispute resolution form, along with the information Mr P provided to Virgin Money in his phone call to them on 4 May 2020 gave sufficient detail. Mr P told Virgin Money that he was raising the dispute because he had requested to cancel his hotel stay with O several times since early April 2020 and hadn't received a response. I think in these circumstances Virgin Money could have raised the chargeback claim at this point.

Had the chargeback claim been raised I think it would have had a good chance of success, considering the cancellation terms outlined on Mr P's booking invoice. But I don't know for certain that the claim would have been successful – because of that I've also considered whether a S75 claim should have been considered by Virgin Money.

Section 75

In this case the relevant law includes S75 of the CCA. S75 says that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of the goods or services. This is subject to certain criteria that need to be satisfied such as the claim has to be within specific financial limits and the existence of DCS relationship between the parties.

Virgin Money have told our investigator that a S75 claim couldn't be considered as the DCS relationship wasn't in place. They said that, as Mr P had used O to facilitate his hotel booking, the DCS relationship had been broken. But I agree with our investigator here and think there is a valid DCS relationship in place. As our investigator has pointed out, O explained to Mr P in his booking confirmation invoice that he would be entitled to free cancellation of the accommodation up until 14 April 2020. And O's terms and conditions state that all cancellation requests must be made to them. As it appears O have set the cancellation terms here, I'm satisfied they would be responsible for a claim about the breach of contract in relation to them.

Mr P has said he tried to contact O numerous times over a two-month period to find out where his refund was. He has also provided screenshots of his email correspondence to O, where he mentions cancellation and a refund – most of which were sent to O prior to 14 April 2020. I'm satisfied Mr P tried to cancel his hotel stay prior to 14 April 2020, and as per his booking confirmation should have received a full refund. As this didn't happen, O have been in breach of their contract. As Virgin Money have equal liability under S75 it follows that they should now reimburse Mr P.

My decision is that Virgin Money should refund Mr P £554.92 for the hotel booking that was cancelled. I'm also asking them to pay 8% simple interest on this amount from the time the original chargeback claim was closed by them, to reflect that Mr P has been without this money for some time.

My final decision

For the reasons above, I'm upholding this complaint. Clydesdale Bank Plc trading as Virgin Money must:

- Refund Mr P £554.92 following the cancellation of his hotel booking.
- Pay Mr P 8% simple interest on this amount from the date the original chargeback claim was closed (23 July 2020) until the date this is settled.*

*If Clydesdale Bank Plc trading as Virgin Money consider that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr P how much they've taken off. They should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 3 November 2022.

Kevin Parmenter
Ombudsman