

The complaint

Mr M complains that Clydesdale Bank plc, trading as Virgin Money, won't refund to him the money that he and his wife paid for some holiday club membership credits. He's being represented in his complaint by a claims management company.

What happened

Mr M and his wife had an existing timeshare that they wanted to relinquish. They say that they were approached by a relinquishment company and offered a promotional holiday during which they attended a presentation about relinquishing their existing timeshare. Mr M paid the relinquishment company £2,678.97, using his Virgin Money credit card, in March 2015 to relinquish the timeshare. Mr M and his wife also agreed to buy some holiday club membership credits and they made a payment of £8,212 to a holiday company by bank transfer for those credits.

Mr M claimed a refund of those amounts from Virgin Money under section 75 of the Consumer Credit Act 1974 in April 2019 but his claim was declined. Virgin Money determined that there was no evidence to support that there had been a breach of contract or misrepresentation on the merchant's behalf. Mr M wasn't satisfied with its response so complained to this service.

Our investigator recommended that his complaint should be upheld. He thought that there were misrepresentations made by the relinquishment company which induced Mr M and his wife to purchase the package of products. He recommended that Virgin Money should: rework Mr M's account as if the transaction had never happened (and refund any credit to Mr M with interest); and refund to Mr M and his wife the £8,212 that they'd paid by bank transfer, with interest.

Mr M has accepted that recommendation but Virgin Money has asked for this complaint to be considered by an ombudsman. It has responded to our investigator's recommendations in detail and says, in summary and amongst other things, that:

- it understands that Mr M's and his wife's main aim was to relinquish their existing timeshare and the March 2015 invoice from the relinquishment company was for the relinquishment of that timeshare;
- it understands that the timeshare was relinquished so there's no breach of contract;
- the relinquishment company introduced Mr M and his wife to the holiday company but there's no mention in the contract with the relinquishment company to the purchase of credits from the holiday company – and it didn't provide the finance for the transaction with the holiday company and shouldn't be held liable for the monies paid to it by Mr M; and
- the relinquishment company said that Mr M and his wife would have the option to sell the credits after three years and it would market them at 50p per credit – but it didn't say that it would sell them or buy them back and it doesn't look like Mr M and his wife took up that option in March 2018.

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.

Having done so, I agree with the outcome recommended by our investigator for these reasons:

- 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;
- to be able to uphold Mr M's complaint about Virgin Money, I must be satisfied that there's been a breach of contract or misrepresentation by the relinquishment company and that Virgin Money's response to his claim under section 75 wasn't fair or reasonable – but I'm not determining the outcome of Mr M's claim under section 75 as only a court would be able to do that;
- Mr M and his wife signed a contract with the relinquishment company in March 2015 which said: *"We hereby confirm that we relinquish ownership of the following to [the relinquishment company] upon completion of our Purchase Contract"* and the details of their existing timeshare were set out. The contract then said: *"We understand that we will no longer be liable for maintenance fees or transfer costs once the relinquishment has taken place"*;
- Mr M and his wife also signed an invoice from the relinquishment company which said: *"Admin cost for the relinquishment of [their existing timeshare]"* and the amount of £2,738 was specified – but the amount actually charged to Mr M's credit card with Virgin Money was £2,678.95;
- Mr M and his wife also entered into a contract with the holiday company to buy 30,000 credits for £8,212 and payment for those credits was made by bank transfer;
- the relinquishment company also provided Mr M and his wife with a letter which said: *"Please accept this letter as confirmation that you have the option, after 3 years, to resell your credits. We will remarket them for 50p per credit"*;
- the holiday company appears to be a different company to the relinquishment company but their addresses are similar and they share the same phone and fax numbers and the same contract number was used by both the holiday company and the relinquishment company on their contracts with Mr M and his wife;
- I consider it to be clear that it was a condition of the relinquishment company taking over their existing timeshare that they had to enter into the purchase contract with the holiday company for the credits;
- the relinquishment company also agreed to market the credits for Mr M and his wife after three years but I consider it to be more likely than not that it knew (or ought reasonably to have known) at that time that there was no reasonable prospect of the credits being resold;
- I'm persuaded that Mr M and his wife entered into the contracts as a package because they wanted to receive some money back for their existing timeshare and were led to believe that buying the credits would enable them to do that;
- I'm not persuaded that it's likely that they'd have entered into the contract to buy the credits as they wanted to relinquish their existing timeshare unless they'd been led to believe that they'd be able to sell them;
- Mr M and his wife haven't used the credits and have received no benefit from them;

- I consider that the credits were misrepresented to Mr M and his wife and that they were induced into entering into the contracts with the relinquishment company and the holiday company by those misrepresentations – and I don't consider it to be likely that they'd have entered into those contracts if the misrepresentations hadn't been made by the relinquishment company;
- Virgin Money is jointly liable with the relinquishment company for those misrepresentations so I don't consider that its response to Mr M's claim under section 75 was fair or reasonable; and
- I find that Mr M's complaint about Virgin Money should be upheld.

Putting things right

I find that it would be fair and reasonable in these circumstances for Virgin Money to put Mr M back in the position in which he would've been had the misrepresentations not been made. I find that it should rework Mr M's credit card account as if the payment of £2,678.97 hadn't been made in March 2015 as described in more detail below and that it should refund to Mr M the £8,212 that he and his wife paid in March 2015, with interest.

My final decision

My decision is that I uphold Mr M's complaint and I order Clydesdale Bank plc, trading as Virgin Money, to:

1. Rework Mr M's credit card account as if the payment of £2,678.97 hadn't been made in March 2015, and - if that puts the account into credit - to pay interest at an annual rate of 8% simple on the credit balance for the periods that the account was in credit. It should also refund the credit balance to Mr M.
2. If Mr M has repaid the £2,678.97 (or any part of it) to Virgin Money but doesn't have a credit balance, to pay interest on the amount that he has repaid at an annual rate of 8% simple from the date of payment until the date of settlement.
3. Refund £8,212 to Mr M.
4. Pay interest on that amount at an annual rate of 8% simple from the date of payment to the date of settlement.

HM Revenue & Customs requires Virgin Money to deduct tax from the interest payments referred to above. Virgin Money must give Mr M a certificate showing how much tax it's deducted if he asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 March 2023.

Jarrold Hastings
Ombudsman