

The complaint

Miss O is complaining that Clydesdale Bank Plc (t/a Virgin Money) hasn't refunded an amount she paid on her Virgin credit card to rent a villa.

What happened

In June 2019 Miss O paid to rent a villa on a Spanish island through an online property rental company – who I shall refer to as A – to visit in May 2020. She paid £1,157.49 to rent the property and she paid for it on her Virgin credit card. She also bought flights to and from the island and she bought and paid for these separately.

Unfortunately, due to the impact of Covid-19, her flights were cancelled. She later contacted A to request a refund of the amount she paid, but was unsuccessful. So she contacted Virgin to request a refund. Virgin processed a chargeback claim against A, but A defended the claim as it said Miss O didn't ask for a refund until after the booking was due to take place. And it said she wasn't entitled to a refund in these circumstances.

Following this, Virgin wrote to Miss O to say it was unable to pursue the chargeback claim any further. It also said, she wasn't able to raise a claim under Section 75 of the Consumer Credit Act ('Section 75') because it said A was only acting as an agent for the rental provider. Miss O didn't think this was fair so referred her complaint to this Service.

I issued a provisional decision upholding this complaint and I said the following:

"Miss O is complaining about the way Virgin handled a dispute over a payment she made to A for a holiday rental. Where a consumer raises a dispute about a transaction made on a credit card, the card provider can consider the dispute under two guises – chargeback and Section 75 of the Consumer Credit Act ('Section 75'). I would expect the card provider to consider both avenues. I'll consider both avenues separately.

Chargeback

Chargeback is the process by which a bank or credit card provider looks to resolve a settlement between a consumer and a merchant under the relevant card scheme. Initially the card provider will temporarily refund the payment back onto the card account and will raise a dispute with the merchant. The merchant is then required to respond within a prescribed period of time with any further information it wishes to provide and set out why it thinks the chargeback shouldn't go through. If the chargeback is defended, then the temporary refund is returned to the merchant. The rules under which the chargeback can be pursued are strict and are set out by the relevant card scheme.

In this case, there are two potential chargeback avenues Virgin could have looked to pursue a chargeback – "credit not processed" or "services not provided". In this case, Virgin presented the claim twice – i.e. took it to what is known as "pre-arbitration". A defended the chargeback on the basis that Miss O didn't contact it until after the booking was meant to go ahead. So it didn't think there was a right to a refund. But I haven't seen anything to show that it actually thought about whether the supplier could or did make the property available to

Miss O to rent at the time.

I think it's important to note that, due to local lockdown rules owing to Covid-19, I understand that at the time of the booking hotels and small businesses were still required to be closed. So I don't believe the supplier was able to provide the service it was contractually required to provide. I think Virgin should have understood this and should have presented this as a reason for the chargeback to be successful. I think, had it done so, there was reasonable prospects of the chargeback succeeding.

Ultimately, I think, had Virgin robustly pursued the chargeback claim to the full extent, I think it would have been successful. And I'm satisfied Miss O has lost out as a result.

Section 75

While, I'm satisfied Miss O has lost out because of Virgin's handling of her chargeback claim, I've also thought about whether it could have done more in its handling of her Section 75 claim. I don't think it could have done.

Miss O paid for the holiday rental on her Virgin Credit card. Section 75 sets out that in certain circumstances, as the finance provider, Virgin is jointly liable for any breach of contract or misrepresentation by the supplier.

As I said above, in order for Section 75 to apply, there are certain criteria that need to be satisfied – one of which is establishing a debtor-creditor-supplier agreement (DCS) between the parties. In essence, the key here is that it's the debtor who is entitled to make a claim against the creditor, and their claim against the creditor is the same as their claim against the supplier.

But in this case, the hotel rental wasn't provided by A but was provided by a third party. Virgin doesn't have a financial arrangement with the third party as its payment contract is with A. So, while for the reasons I set out above, Miss O may have a contractual claim against the supplier of the contract, Virgin can't be held jointly liable for a breach of contract or misrepresentation by the supplier.

I think Miss O could hold Virgin responsible for a breach of contract or misrepresentation of the contract by A. But A's responsibility was only to administrator of the contract. Ultimately Miss O is unhappy that the supplier hasn't given a refund. And I don't think A is liable for that.

Summary

For the reasons I've set out above, I think Miss O has unfairly lost out in this case. Had it robustly pursued the chargeback claim to the full extent, I think the temporary credit it provided in July 2020 would have become permanent. So I intend to say Virgin should reconstruct the credit card as if the temporary refund it gave on 24 July 2020 wasn't reversed. I also intend to say it should refund Miss O for any time she's been out of pocket due to the credit being reversed and pay 8% simple interest (less tax if appropriately deducted) on this from the time she's out of pocket until she gets it back."

Miss O responded to accept my provisional decision. Virgin didn't respond.

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.

As neither party has given me anything further to think about, I see no reason to reach a different conclusion to the one I reached in my provisional decision. So I uphold this complaint for the reasons I've set out in my provisional decision.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and I require Clydesdale Bank Plc to reconstruct the credit card as if the temporary refund it gave on 24 July 2020 wasn't reversed. It should refund Miss O for any time she's been out of pocket due to the credit being reversed and pay 8% simple interest on this from the time she's out of pocket until she gets it back. If Clydesdale thinks that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss O how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 2 December 2022.

Guy Mitchell

Ombudsman