

The complaint

Miss F is unhappy Clydesdale Bank Plc trading as Virgin Money won't refund her a payment she made, for accommodation, on her credit card.

What happened

In July 2019, Miss F booked an accommodation for £5,000, for 7 to 11 October 2020. Miss F used her Virgin Money credit card to pay a deposit of £1,250 in July 2019 and she paid the remaining amount of £3,750 via bank transfer in May 2020.

Miss F says the supplier of the accommodation cancelled the booking as they couldn't provide the service due to the Covid-19 pandemic. Miss F says the supplier promised her a refund but couldn't tell her when she was going to get her money back. Although Miss F says she wasn't able to provide us with the communication from the supplier where they said they were cancelling the booking, Miss F has provided us with email communication from the supplier promising to refund her what she'd paid for the accommodation.

Miss F said she waited 10 months for the refund, but as she didn't receive this, she made a claim under Section 75 of the Consumer Credit Act 1974 (CCA) to Virgin Money in July 2021. Miss F says, eventually, Virgin Money told her that her claim was being considered but that it was likely to be unsuccessful. Miss F reminded Virgin Money that the booking was cancelled by the supplier. Miss F said she didn't hear from Virgin Money in response to her Section 75 claim, which caused her to bring her complaint to our service.

Miss F says she wanted Virgin Money to process her Section 75 claim and to refund her the full £5,000 she paid for the accommodation.

Virgin Money initially told us they didn't provide Miss F with a final response letter as they were still completing their investigation into her claim. Virgin Money also recognised that while there were no set timescales to follow for a Section 75 claim, a long time had passed for Miss F to wait for an outcome. Virgin Money said they were in regular contact with the supplier and were waiting on their response. Because of this, they didn't offer any compensation for the service Miss F received.

Miss F then provided us with a copy of Virgin Money's response to her claim which was sent in September 2022. The response said Miss F's Section 75 claim was unsuccessful as they didn't think there had been a breach of contract or misrepresentation by the supplier – they said Covid-19 related events were outside of both parties' control and this led to the contract being frustrated. Virgin Money also made reference to the original invoice which stated the deposit of £1,250 was non-refundable.

Our Investigator looked into Miss F's concerns. In summary, she said she was satisfied Miss F's claim was brought outside of the timeframe that applies under chargeback rules. However, our Investigator concluded the supplier wasn't able to provide the service Miss F had booked, so she found there was a breach of contract. As a result, our Investigator recommended:

- Virgin Money rework Miss F's account as if the payment of £1,250 had been refunded when Miss F raised her Section 75 claim.
- If there's a credit balance, Virgin Money pay 8% simple interest from the date it would have arisen to when it ceased to exist.
- Virgin Money to also refund the deposit of £3,750 and pay 8% simple interest from the date of dispute until the date of settlement.

Miss F accepted our Investigator's view. Virgin Money responded with just a copy of their final response letter from September 2022. So, the complaint has 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.

This complaint is about Virgin Money, as Miss F's credit card account provider. It's not about the supplier, who aren't a financial service provider and so don't fall within my remit.

There is no automatic obligation on a credit card issuer to provide redress where one of their customers uses their facilities to make a purchase, and something then goes wrong with that purchase. However, there are typically two avenues via which the credit card issuer can help or may have a legal liability.

Chargeback

I can't see Virgin Money considered Miss F's request for a refund under the chargeback scheme. And while chargeback was available, I don't think it would have been of any help to Miss F. I'll explain why.

When something goes wrong and the payment was made with a credit card, as is the case here, it may be possible for the business to raise a chargeback claim. But there is a strict time limit within the chargeback rules which is set by the card scheme (not Virgin Money). The rules say Miss F had to raise a chargeback within 120 days of the last date she expected to receive the service from the supplier of the accommodation. So if Virgin Money had considered Miss F's claim under the chargeback rules, I don't think it would have been successful as Miss F raised her dispute to Virgin Money more than 120 days after the last date she expected to receive the service, which was 11 October 2020.

I'll next go on to consider Miss F's Section 75 claim and whether Virgin Money fairly responded to this.

Section 75

In deciding what is fair and reasonable in this case, I am required to give consideration to relevant law. Section 75 of the CCA says that, in certain circumstances, if Miss F paid for goods and services, in part or whole, on her Virgin Money credit card, and there was a breach of contract or misrepresentation by the supplier, Virgin Money can be held responsible. For Section 75 to apply, certain criteria needs to be satisfied relating to things like the parties to the transaction, the way the payment was made and the cost of the goods. I'm satisfied this is met and Section 75 applies here.

In this case, Virgin Money didn't think there was a breach of contract. They said this was because Covid-19 was out of both the supplier's and Miss F's control, rendering the contract

impossible to be fulfilled. Also, Virgin Money said the deposit Miss F paid was non-refundable. But they said they understood the supplier of the accommodation had reopened their service, so suggested Miss F may be able to rebook or obtain a refund directly from the supplier.

Miss F has provided us with communication from the supplier. Having carefully considered this, the supplier clearly referred to their business being shut since the Covid-19 pandemic and that once they reopened, they'll honour any refund requests from their customers. I think this is sufficient evidence that the supplier wasn't able to provide the service and that they were going to provide Miss F with a refund, but it appears this didn't happen as it seems the supplier then ceased business.

I've next gone on to consider the supplier's terms and conditions to see what they say in the event the supplier isn't able to provide the service. I note the deposit was non-refundable, but the booking terms and conditions set out that in the event the property becomes unavailable through no fault of the supplier or the owner, and the balance has been paid (which it was in Miss F's case), an alternative property would be offered. And in the event this wasn't possible, a refund will be arranged to the lead booker. An alternative property couldn't have been offered as the suppliers' business was shut. And despite the promise of a refund from the supplier, Miss F never received this. I think these terms and conditions show that the supplier has thought about not being able to provide the service due to situations like this, where the property is unavailable due to circumstances outside of their control. But it appears to put this risk on the supplier and says if they're unable to provide the service, they agree to give the customer a refund. In this case, that didn't happen, so, I think this is a breach of contract.

As a result of the above, I think Virgin Money treated Miss F unfairly when they declined to meet her claim under Section 75. So, I think Miss F should, therefore, receive a refund of the £5,000 she paid. I've explained how this should be paid in the 'putting things right' section of this decision below.

While I've considered Virgin Money's point about the contract being frustrated, this is not the same as breach of contract – it's a different legal doctrine. In any case, the supplier's terms and conditions specifically cover a situation where they're unable to provide the service through no fault of their own. Therefore, I don't think Virgin Money can argue the contract was frustrated. I've already explained why I think there has been a breach of contract.

Virgin Money acknowledged they took some time to provide Miss F with an answer to her claim – Miss F raised her claim in July 2021, and Virgin Money provided their response to the claim September 2022.

Virgin Money's internal notes show they were in regular contact with the supplier about Miss F's claim for a refund and it got to a point where the supplier stopped replying to Virgin Money. I can understand why Miss F felt she had to bring her complaint to our service as she hadn't received an answer to her claim and I think Virgin Money could have been better at letting Miss F know they were regularly contacting the supplier for information. While Virgin Money have said there's no set timescale to deal with a Section 75 claim, I think taking over a year to provide their response to Miss F's Section 75 claim seems unreasonable to me. As per my instruction in the below section, I've recommended Virgin Money rework Miss F's account as though the payment of £1,250 made in July 2019 had been refunded when Miss F raised her claim, rather than from the point they declined the claim, in recognition of the amount of time Virgin Money took to provide their final response letter.

Putting things right

In summary, I require Virgin Money to:

- Rework Miss F's credit card account as though the payment of £1,250 made in July 2019 had been refunded when Miss F raised her Section 75 claim. This means any interest, fees or charges relating to the payment from that date should be refunded, and any negative credit file reporting which may have been caused by it, removed. If a credit balance would have arisen on the account at any point, 8% simple interest per year* should be added to the refund, calculated from the date the credit balance would have arisen, to the date it would have ceased to exist.
- Refund Miss F the £3,750 she paid of the remaining balance and pay 8% simple yearly interest from the date of Miss F's dispute to the date of payment.

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

My final decision

For reasons explained above, I uphold this complaint and I require Clydesdale Bank Plc trading as Virgin Money to carry out the actions as set out under the 'putting things right' section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 23 May 2023.

Leanne McEvoy
Ombudsman