

## **The complaint**

Mrs J complains about the way Clydesdale Bank Plc trading as Virgin Money handled her request for a refund in respect of flights she paid for using her credit card which did not go ahead.

## **What happened**

In September 2021 Mrs J booked return flights for her and her family from London to Lagos via a stop off in Dubai with an airline I'll call E. The flights cost £3,642.76 and were due to depart on 23 December 2021 and return on 6 January 2022.

On 26 December 2021, while Mrs J was in Dubai, E emailed her to explain her flight from Dubai to Lagos had been cancelled. Mrs J said she called E to see if she could get another flight but was told that she'd need to visit one of its offices to sort things out.

Upon visiting a local office in Dubai, Mrs J said she was told that E could fly her to Ghana but could not arrange to get her into Nigeria. She said she was also told that if she were to stay in Dubai until the next available flight with an alternative airline on 3 January 2022, E wouldn't cover her additional expenses.

Mrs J said she made the decision to fly back to London on 30 December 2021 as she wasn't going to be able to get into Nigeria. She said she had to cancel a taxi that was going to pick her up on 6 January 2022 and was charged the full cost of this as a result of not being able to provide sufficient notice of cancellation. Mrs J complained to E about what had happened.

E wrote to Mrs J in late January 2022. It said her flight had been cancelled because of "the Nigerian Government retracting our approval to operate flights". It said because this was out of its control, it wouldn't be paying a refund to Mrs J.

A few days later Mrs J asked Virgin Money to step in and help by considering a claim for a full refund of her flights under Section 75 Consumer Credit Act 1974 ('Section 75').

Still in January 2022, Virgin Money wrote to Mrs J seeking more information about her claim. Mrs J provided this in February 2022. According to Virgin Money's records, nothing then happened until June 2022 when Virgin Money asked Mrs J for even more information about her claim.

Virgin Money declined Mrs J's claim in September 2022. It said it had considered its liability to her under Section 75 but it didn't think there had been a breach of contract as the situation was covered by a 'limitation of liability' clause in E's terms and conditions.

When Mrs J complained to Virgin Money about its handling of the complaint it accepted it had failed to do anything with her claim between February 2022 and June 2022 and offered to pay her £150 compensation for this. But it maintained that it had not unreasonably declined to meet her claim for a refund.

An investigator thought Mrs J's complaint should be upheld in part. She said E had breached its contract with Mrs J by cancelling her flights to Lagos. And she thought a claim made under a process known as chargeback would likely have succeeded in part also. She asked Virgin Money to pay Mrs J a pro rata refund for the flights that were cancelled as well as the additional taxi costs she incurred because she had to change her arrangements.

Mrs J agreed with the investigator's findings.

Virgin Money didn't reply to the investigator before the deadline it was given, so the complaint was referred to an ombudsman for review.

### **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 am looking here at the actions of Virgin Money and whether it has acted fairly and reasonably in the way it handled Mrs J's request for help in getting her money back. This will take into account the circumstances of the failed trip and how the supplier has acted, but there are also other considerations, such as the scheme rules a bank has to follow and its own obligations.

There are two main ways a bank can help a consumer to recover money paid to a supplier who hasn't provided what was promised. It can try to recover the money from the supplier through a process known as chargeback. Or it can assess whether the consumer has a valid claim under Section 75.

#### **Chargeback**

In certain circumstances the chargeback process provides a way for a bank to ask for a payment a consumer made to be refunded. Where chargeback grounds exist under the relevant scheme rules and there is some prospect of success, it is good practice for a bank to attempt a chargeback.

From what I have seen Virgin Money did not attempt a chargeback for Mrs J. However, looking at the scheme rules, it seems it should have done. A chargeback raised under the 'services not received' dispute condition looks to have had a reasonable prospect of success given E cancelled Mrs J's flight from Dubai to Lagos and declined to pay her a refund. And it looks very unlikely the return flight from Lagos to Dubai would have gone ahead either given the well documented problems E was having in Nigeria at the time. So, Mrs J could in all likelihood have claimed the cost of that back too.

E told Mrs J it wouldn't refund her because the flights were cancelled due to unforeseen circumstances. So, it might have defended a chargeback on similar grounds. However, a chargeback is decided based on the rules of the card scheme as opposed to the legal specifics of a dispute. And the scheme is clear that there are chargeback grounds where services have not been provided.

Mrs J wouldn't have been able to chargeback the whole cost of the flights as some of them were utilised. But the scheme rules allowed for partial chargebacks where not all of the services that were purchased were delivered. As the investigator pointed out, there is no breakdown of the cost of each flight on the booking confirmation. She apportioned equal value to each flight to come up with a figure of £1,821.38 for two flights. In the absence of a fairer suggestion from Virgin Money, I see no reason to depart from this way of working out the cost of the services that were not provided.

So, I think a chargeback raised in respect of the flights that weren't received would most likely have succeeded if robustly pursued by Virgin Money. This could have been raised when Mrs J returned her evidence to Virgin Money on 10 February 2022. Allowing reasonable time for the chargeback process to complete, (which can take up to three months), Mrs J would likely have had her money back by 10 May 2022. So Virgin Money should pay Mrs J £1,821.38 plus interest from this date.

Mrs J couldn't recover the cost of the taxi she had to cancel in the UK via chargeback as the scheme did not provide a mechanism to claim additional/consequential losses like this. So, I've also considered whether Mrs J likely had a valid claim under Section 75.

## Section 75

Section 75 provides 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 goods or services.

E's terms and conditions contained a general promise to fly Mrs J and her party and also set out that in the event it cancelled a flight it would offer Mrs J the choice of either an alternative flight or a refund. But after cancelling her flight, E told Mrs J it was "unable to offer any form of recompense" when she contacted it in January 2022. And it told her it couldn't get her into Nigeria when she asked it to provide an alternative flight. So, it appears E did breach its contract with Mrs J and she likely had a valid claim in respect of the flights that were cancelled.

As I've explained above, these appear on balance to have been both the outbound and return legs of the journey from Dubai to Lagos given the well documented problems between E and the Nigerian government at that point in time. Again, in the absence of a fairer suggestion of working things out, the investigators way of calculating the unused portion of the journey doesn't seem unfair.

Virgin Money pointed at a clause which it said meant E wasn't liable to Mrs J. Having looked at archived versions of E's website from the time of Mrs J's booking, this term appears to exclude all liability for any breach of contract by it. Whether such a clause would pass a test for fairness in court is questionable. But, as the investigator pointed out, the clause set out that it didn't apply to air carriage provided by E in any event. So, this doesn't appear to have been a good reason to decline Mrs J's claim.

Mrs J said she had to cancel a taxi she'd booked from the airport in the UK as a result of having to fly home earlier than planned and this happened too late to receive a refund. I've seen an invoice for £145 marked paid for this, so I'm satisfied it's a cost that has been met by Mrs J. Generally, a consumer can claim for additional losses which are the foreseeable result of a breach of contract. Looking at the archived version of E's terms and conditions, and noting that Virgin Money has not offered anything in response to the investigator's view on this matter, I've not seen anything in this particular case that makes me think it would be unfair to require Virgin Money to pay this sum to Mrs J.

Overall therefore, it was likely Mrs J had a valid claim in respect of her cancelled flights (either via chargeback or Section 75) and the cost of her cancelled taxi. So, by declining to meet Mrs J's request for a refund of these items, Virgin Money treated her unfairly. On that basis I find it would be fair and reasonable in this case for Virgin Money to treat Mrs J as if it had met her request for a refund of these two items and pay interest on both sums.

Virgin Money accepted in its complaint response that it took too long to consider Mrs J's

request for help. I can see it did nothing with her claim between February and June 2022 which was an unreasonable length of time. Virgin Money offered to pay Mrs J £150 compensation for this. I think that's fair compensation. Virgin Money should pay this to Mrs J if it hasn't yet done this.

### **My final decision**

My final decision is that I uphold Mrs J's complaint. To put things right Clydesdale Bank Plc trading as Virgin Money must:

- Pay Mrs J £1,821.38 for the cancelled flights plus interest of 8% simple per annum from 10 May 2022 until the date of settlement \*;
- pay Mrs J £145 for the cancelled taxi plus interest of 8% simple per annum from the date it declined her claim on 1 September 2022 until the date of settlement \*, and;
- pay Mrs J £150 for distress and inconvenience (if this has not already been paid to her).

\*If Clydesdale Bank Plc trading as Virgin Money considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs J how much it's taken off. It should also give Mrs J a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 3 March 2023.

Michael Ball  
**Ombudsman**