

The complaint

Mr C is unhappy Clydesdale Bank Plc trading as Virgin Money won't refund him for flights that he bought using his credit card.

What happened

In December 2020, Mr C purchased two return flights with an airline ("A"), through a travel agent ("G") for him and his wife, to America. They were due to fly out on 12 October 2021 and then return on 5 November 2021. Mr C used his Virgin Money credit card to pay G £1,028.35 for the flights.

In July 2021, Mr C received an email confirming the visas he and his wife needed in order to enter into America had been cancelled and the borders to America were closed due to Covid-19. Mr C says without the visas, he and his wife wouldn't have been able to enter into the destination.

In September 2021, Mr C says he received an email from G explaining that the original flights he booked had been changed by A – the new flight was due to depart and return on the same days as the original booking, but now both flights included an additional stopover in a different country. Mr C says this would have added a significant amount of time onto his overall travel. Mr C hasn't been able to provide us with any evidence to suggest he responded to G's email when they communicated the alternative flights, but he doesn't think this alternative was reasonable. Virgin Money say Mr C accepted the alternative flights but the evidence they provided appears to relate to a different booking Mr C had.

On 11 October 2021, Mr C emailed G and said the American borders had been closed due to the Covid-19 pandemic and so he requested a full refund for the flights. Mr C received an automated response from G on the same day but didn't hear anything more.

Mr C didn't receive a refund and so raised a chargeback claim with Virgin Money in October 2021. The chargeback was then defended as G explained Mr C and his wife didn't show up for the alternative flight which went ahead. And that there was no evidence to show Mr C rejected the flight changes when this was communicated to him by G. Virgin Money also told Mr C that under Section 75 of the Consumer Credit Act 1974, there was no breach of contract or misrepresentation caused by G. Therefore, Virgin Money didn't think Mr C was owed a refund. However, Virgin Money did think Mr C was given poor customer service when they advised him to contact them but didn't give him timings of when he should call alongside when they called Mr C but they weren't able to access their disputes system due to a system error. For this, Virgin Money offered Mr C £80 compensation which hasn't yet been paid.

Unhappy with Virgin Money's response, Mr C contacted our service. Our Investigator looked into Mr C's concerns and overall, didn't think Virgin Money had done anything wrong. In relation to Mr C's chargeback claim, our Investigator recognised he didn't specifically say he wanted to cancel the flight booking when he emailed G on 11 October 2021, instead he asked G for a refund. Having looked at G's terms and conditions, our Investigator didn't find a provision which allowed Mr C a refund. In relation to Section 75, our Investigator

concluded there wasn't the necessary relationship between Mr C, Virgin Money and A (as they were the supplier of the flights) for a valid Section 75 claim. But in any case, even though there wasn't the necessary debtor-creditor-supplier relationship, our Investigator looked at whether there was a breach of contract. However, as G fulfilled their role in the transaction by making the reservation for the flights on Mr C's behalf and the fact that the flight went ahead, she didn't think there was a breach of contract or misrepresentation. Lastly, our Investigator said Virgin Money's offer of £80 compensation for the poor service Mr C received was fair and reasonable. So, our Investigator didn't ask Virgin Money to do anything more.

Mr C disagreed. In summary, he explained the American borders were closed due to government restrictions as a result of Covid-19. And the visas he arranged for him and his wife had been cancelled. Therefore, it wasn't possible for them to travel to the destination. Mr C also referred to another instance where he booked other flights, with the same airline, for a different date, and he was offered vouchers when it was recognised by the merchant of that booking that Mr C wasn't able to travel. So, Mr C has questioned why that isn't possible in this booking with G. Mr C also said the alternative flight provided by G wasn't reasonable for the same reasons he provided previously. And that the service provided i.e. the original flight, wasn't provided to him. So, the complaint has been passed to me to decide.

I issued a provisional decision on the matter, setting out the below:

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

The crux of Mr C's complaint is that the visas he arranged for him and his wife were cancelled so they wouldn't have been able to enter into America. Additionally, the government rules in place at the time prohibited British nationals entering into America and that the alternative flights provided weren't suitable.

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

In certain circumstances, when a cardholder has a dispute with a merchant, as Mr C does here, Virgin Money (as the card issuer) can attempt a chargeback. The process involves the card issuer disputing payments made on the card through a dispute resolution scheme operated by the companies which run the card networks, in this case it's Mastercard. I would normally expect a credit card issuer to attempt a chargeback if there was a reasonable prospect of this achieving a successful outcome.

It seems from the information provided to me that Virgin Money raised a chargeback with G for goods and services not provided. G say they didn't breach their contract as the alternative flights offered to Mr C and his wife, were available and went ahead. And G provided evidence this was the case. So, Virgin Money say they were unable to take Mr C's chargeback claim any further. Having looked at the evidence provided, I can see the flight still went ahead, and Mr C and his wife were deemed as 'no shows'. This was because Mr C says he was unable to get the flight due to his and his wife's visas to enter into the destination being cancelled. With this in mind, I don't think there's a reason code Virgin Money could have used in this case as G were able to evidence the flight was still available and it went ahead. And I can't hold Virgin Money responsible for the visas being cancelled.

Mr C says the flight we've referred to (which is the one that went ahead) was an alternative flight and not the original flight he booked through G – therefore, Mr C says the service wasn't actually available as the original flight wasn't available for him to go on. However, while there was a change in the schedule, the service was still provided to Mr C. And having looked at the original schedule alongside the alternative schedule, Mr C was due to depart and return on the same days and there wasn't much difference in the timings of the flights. Additionally, A's terms and conditions allow for changes in flight schedules for a variety of reasons which isn't entirely uncommon with airlines like A. But A were still able to fulfil the contract as the service was provided.

Mr C has since complained that he wouldn't have accepted the alternative flight because it wasn't possible for him and his wife to enter into America without their visas. Having looked at A's terms and conditions for when a schedule change occurs, it seems there would have been a change in the flight tickets, so A had to effectively be told Mr C wasn't happy with the change. And it seems from the information supplied by Virgin Money, new tickets were issued for the alternative flight for Mr C and his wife. In terms of a cancellation request, G's terms and conditions set out any cancellation must be sent via email form at the latest three working days after the event giving rise to the cancellation, but at least five working days before departure.

On 27 September 2021, Mr C received notification of the flight change – but he's not been able to provide us with any evidence to show he didn't accept these changes. Additionally, Mr C previously told our Investigator he couldn't remember whether he replied to G or not about the change. On balance, I don't think Mr C made G aware he didn't accept the flight change as there's no evidence to suggest this was the case. And there's also evidence to show new tickets were issued for the alternative flight for Mr C and his wife. In relation to the email Mr C sent to G on 11 October 2021, he said he wanted a refund as he and his wife couldn't enter into America. Even if I did consider this email amounted to a cancellation request, it wasn't done in line with what G's terms and conditions set out. So, I don't find it likely a chargeback would have been successful if Virgin Money raised one for cancellation of a service under the scheme rules, because Mr C didn't cancel the booking in accordance with the terms and conditions.

Having looked at the Mastercard Covid-19 guidance, issued in May 2020, they refer to a scenario which I think is most relevant in Mr C's circumstance:

Question: The cardholder is notified that the date of service (e.g. concert, sports event, flight or package holiday itinerary) was changed/postponed due to COVID-19 restrictions; however, the cardholder cannot or does not want to use the service on the new date. Does an issuer have chargeback rights?

Answer: Yes. There is a chargeback right when services are changed or postponed by the merchant and this is not accepted by the cardholder. Cardholders are not obligated to accept reasonable alternative services unless required by the terms and conditions properly disclosed to the cardholder at the time of the purchase, or applicable government legislation or regulations.

In this case, Mr C was offered the option of not accepting the flight change in G's email of 27 September 2021. But as I've explained, there's no evidence to persuade me Mr C responded to this request. The only piece of evidence I have where Mr C alludes to a cancellation is when he emailed them a day before the flight was due to depart asking for a refund. However, this was too late under G's the terms and conditions.

So, with all of this in mind, even if Virgin Money didn't put through Mr C's chargeback under the most appropriate code in the first instance, it sounds like Mr C's claim would have

been unsuccessful anyway.

Overall, I don't think Virgin Money acted unreasonably in the way they handled Mr C's chargeback claim – ultimately, G was able to evidence the service i.e. the flight, was still available. And Mr C wasn't due a refund as per the terms and conditions. While I appreciate Mr C's frustrations in that he was unable to travel on the flight as a result of the government restrictions in place due to Covid-19, as well as the visas being cancelled, that's not something I can hold Virgin Money responsible for here.

Mr C says G ought to have known about the government restrictions in place at the time which prevented him and his wife from travelling to the destination. But that's not something Virgin Money could pursue G for under the chargeback rules that apply.

Mr C has referred to another flight booking he had with A where he was offered vouchers when it was recognised that he was unable to travel. I'm only able to look into the actions of Virgin Money in the particular circumstances of this complaint. So, I'm not going to comment on any other offers Mr C may have received from A in relation to other flights.

Section 75

In deciding what I think is fair and reasonable I need to have regard to, amongst other things, any relevant law. In this case, the relevant law is Section 75 which says that, in certain circumstances, if Mr C paid for goods and services, in part or whole, on his Virgin Money credit card, and there was a breach of contract or misrepresentation by the supplier, Virgin Money can be held responsible.

For a valid claim under Section 75 there must be a debtor-creditor-supplier (DCS) relationship in place. This normally means the person who owns the credit card account needs to have a claim for breach of contract or misrepresentation against a company they have paid using their credit card.

With that in mind, Mr C's complaint about the flights being changed and the alternative flight being unreasonable is a claim against A for a breach of contract and not G. But Mr C can't make a claim against Virgin Money for this because he didn't pay A. Mr C paid G for the flights. So, there isn't a valid DCS relationship in place with A.

However, I do think there is a DCS relationship in place for the services provided by G. Turning to G's terms and conditions, they set out that the service they provide is to make a reservation on the customer's instructions, for example, G can make reservations for airline tickets. As the customer's contractor, G formulate a travel agreement between the customer, in this case Mr C, and his chosen service provider, A. Additionally, G's terms say in carrying out their activities, G will observe the due care of a proper contractor – essentially, acting with reasonable skill and care. So, with this in mind, I'm satisfied the contract Mr C entered into with G was for them to provide a booking service and G provided this service. I haven't seen anything to suggest G didn't act with due care. So, I don't think there is a breach of contract here.

G's terms and conditions then go on to explain that cancellations and/or amendments to the service can only be made by the airline or at the request of the customer. And that a cancellation must be sent via e-mail form, the reservation must be cancelled by the person who made the reservation and that this person must indicate definitively whether cancellation of the booking is required. Having looked at the email Mr C sent to G on 11 October 2021, he requested a refund of the flights, he didn't definitively say he'd like to cancel the booking. In any case, this email wasn't sent in line with G's terms and conditions as they explain the cancellation must be sent at the latest three working days after the event

giving rise to the cancellation, but at least five working days before departure. Instead, Mr C's email was sent more than three days after the email about the flight change, and one day before the departure date. So, for these reasons, I can't say G were in breach of their contract by not notifying A of his request for a refund because Mr C's request came too late.

I've also looked at the terms to see what it says about G's responsibility in terms of airline schedule changes. It says:

"In the event of an airline schedule change, [G's full name] will make every effort to inform passengers of the schedule change and new flight schedule prior to departure. [G's full name] is not responsible for schedule changes including, when applicable, changes in routing and/or the number of stops in the itinerary."

Ultimately, G informed Mr C of the flight changes as they were expected to do under their terms and conditions. So, the fact that there were changes to the original flight, isn't a breach of contract under Mr C's contract with G. As Mr C paid G, the service he was to receive was that set out under G's terms and conditions – which as I've explained is to make reservations for airline tickets and to inform him of any schedule changes. So, with that in mind, I don't think Virgin Money were wrong to decline Mr C's Section 75 claim.

Customer service

I note Virgin Money have acknowledged the poor service Mr C received – specifically, they sent Mr C an email asking him to call them in relation to his claim for a refund, but they didn't provide him with specific times to call and when he did call, their customer service team wasn't available. Also, Virgin Money acknowledged a time when Mr C called them and they weren't able to access their disputes system due to a system error. For this, they offered Mr C £80 compensation.

It doesn't appear Mr C has disagreed with this offer. But nonetheless, I think Mr C would have been caused inconvenience as well as frustration in not being able to successfully reach Virgin Money when they asked him to call them. So, I think £80 is fair for the inconvenience caused to Mr C.

Mr C responded and in summary, said he should have received a voucher or a refund for the service he couldn't use at the time as he said this was the recognised system in place at the time. Virgin Money responded and confirmed they agree with my provisional decision.

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 appreciate my decision has come as a disappointment to Mr C. But the contract Mr C entered into with G was for them to provide a booking service as well as inform Mr C of flight changes, which they did – G's terms and conditions didn't allow for a refund in Mr C's circumstances.

I also don't think Virgin Money acted unreasonably in the way they handled Mr C's chargeback claim for reasons explained in my provisional decision. However, for clarity, my decision remains that Virgin Money should pay Mr C £80 as compensation for the inconvenience caused as a result of the customer service Mr C received from them.

My final decision

For reasons explained, I require Clydesdale Bank Plc trading as Virgin Money to pay Mr C £80.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 March 2023.

Leanne McEvoy
Ombudsman