

The complaint

Mr B complains about the way Clydesdale Bank Plc trading as Virgin Money ('CB') handled a claim he made in respect of a purchase on his credit card.

What happened

Mr B bought theme park tickets using his CB credit card from a travel agent ('the supplier') for use abroad. However, due to the global Covid-19 pandemic his flights to the theme park destination were cancelled and the park temporarily closed.

Mr B claimed a refund from the supplier– but it would not refund him in full. It refunded 80% and deducted a charge of 20%. Mr B was unhappy with this, so he raised a dispute for the transaction with CB.

CB says it raised a chargeback, but this was defended by the supplier on the basis that it had fulfilled its contract by issuing tickets for the entry to the attractions. It also pointed to flexible alternate choices that it offered Mr B and its cancellation policy.

CB considered it had done enough to help but Mr B did not, so he complained. This complaint was then referred to this service.

Our investigator looked at the matter and upheld the complaint. In summary, he considered that Mr B did have a valid chargeback claim for '*service not provided*' and that it would have likely succeeded had CB pursued it further. To resolve things he said CB should pay Mr B a refund of the 20% he had claimed plus simple yearly interest.

CB did not agree with this. In summary, it says that Mr B cancelled the service and the supplier's terms are very clear that in this scenario he would incur a 20% cancellation fee. It added that there is no evidence showing the services were not available to him when he cancelled.

I issued a provisional decision on this case. In this I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I am sorry to hear about the disruption to Mr B's plans arising out of the events of the global pandemic. But it is worth noting that CB is not the supplier of the theme park tickets which are the subject of this dispute – so its liability will be limited to what it is able to do in its capacity as the credit card provider. In that respect the key protections are in relation to chargeback and Section 75 of the Consumer Credit Act 1974 ('Section 75'). So I have considered these when determining what CB should fairly do to put things right.

Because of my findings on chargeback below I do not consider it necessary to cover Section 75 further.

Chargeback

Chargeback is a way CB can try and recover the money Mr B has spent on his card. The rules relating to chargeback are set out by the relevant card scheme (Mastercard here). I have considered the relevant card scheme rules and any additional guidance published in light of the Covid-19 pandemic.

It will often be good practice to raise a chargeback where there is a valid reason to do so. In this case it appears the most appropriate chargeback reason code would be that relating to services which have not been provided. From what I understand CB raised a chargeback under this reason code, but it was defended by the merchant.

CB chose to discontinue the chargeback process as a result of the defence it received. However, I don't think it reasonably should have here. In considering why I have noted the arguments presented by CB.

The central reasons highlighted by CB for not pursuing the chargeback further appear to be that Mr B cancelled and received the refund due as set out by the supplier's contract and that the service was still available to use. But from what I can see Mr B didn't actually cancel the service and it was not available to use at the time he requested a refund. I will explain why.

Regardless of the availability of Mr B's flights and accommodation, online research shows that the theme parks he had tickets for (which he was meant to visit around April 2020) were closed due to the global pandemic in March 2020 and were set to remain closed for several months. Furthermore, I don't think it fair to say that the tickets being open ended (and thus potentially available to use at a later date) means that the original service (tickets providing access over a certain validity period) was still available to use at the time Mr B requested a refund.

So it appears the service was not available, rather than cancelled by Mr B. What has apparently confused matters here is that following the cancellation of his flights and closure of the parks Mr B appears to have spoken to the supplier about options in light of the situation— refused an alternative of extending his tickets and requested a refund and as a result the supplier invoked its cancellation policy and sent him a cancellation invoice showing the deduction from his refund. But I don't think this means the customer cancelled a service that was still available for use. It appears clear (and would have been easily discoverable at the time) that when Mr B requested a refund the theme parks he booked were unavailable.

Another point made by CB is that there was flexibility offered by the supplier regarding extending passes for use in the future or provision of a credit note. But the Covid-19 card scheme guidance I have seen issued around the time Mr B raised the matter with CB shows that a consumer does not lose the right to chargeback a transaction if they are offered and refuse a reasonable alternative. Nothing here indicates that Mr B was happy to accept an alternative. I also note that the guidance does refer to some situations where the customer might be forced into accepting a reasonable alternative – but I don't see persuasive information to show that is the case here.

I also note evidence put forward by CB mentions that the supplier fulfilled its side of the contract. But I note its terms state that it is obliged to provide tickets which 'enable entry / access' to the parks as detailed in the booking. From what I can see this was not the case here and access was prevented during a certain time period due to the pandemic. So it does not appear to have fulfilled its side of the contract. I also note that in any event CB has not provided persuasive information from the chargeback rules or guidance to show under this reason code the supplier would not be considered the merchant of record responsible for the

non-provision of service here or that any disclaimers in its contract or attempts to limit liability would be effective in defending the circumstances of this particular chargeback should it reach the latter stages of the process.

Overall, I acknowledge that CB raised a chargeback in an attempt to try and help Mr B, and I have carefully considered what CB has said about why it didn't continue the chargeback, but I think it was clear here that Mr B did not receive the service he paid for, and he wasn't expected under the chargeback rules to accept alternatives. And while the merchant did raise a defence it is not conclusive in the circumstances. Overall, I think CB should have reasonably pursued the disputes process.

I acknowledge and have considered that it is uncertain how this case would be determined should it reach the latter stages of the disputes process such as arbitration by the card scheme. However, in considering what is fair and reasonable I take note that Mr B has lost out on a reasonable opportunity to get his money back as a result of CB choosing to not take the disputes process to the latter stage (which it reasonably should have done here). And while I acknowledge the scheme operator will likely take into account a fact specific interpretation of the claim it is unclear to what extent it would allow the supplier to limit its liability where services are not provided. In considering what likely would have occurred had CB taken things further I note that fundamentally this is a case of a service not being available to Mr B as booked, and the scheme guidance around Covid-19 appears to favour customers being able to pursue a refund in these circumstances rather than unwanted alternative options proposed by the supplier.

Where things are unclear my decision is on the balance of probabilities, and after careful consideration I think the failure to proceed with the chargeback in these particular circumstances has likely caused Mr B a financial detriment. Therefore, considering what is fair and reasonable it now needs to do something to put this right.

Overall, I consider it fair and reasonable to award Mr B what I consider CB's actions have, on balance, likely caused him to lose out on. Which is a refund of the amount he was claiming against the supplier through chargeback. I also think it fair he is awarded out of pocket interest on this from the date it declined the claim.

My provisional decision

I uphold this complaint and direct Clydesdale Bank Plc trading as Virgin Money to refund Mr B £1,168.20 plus 8% simple yearly interest on this calculated from the 21 August 2020 until the date of settlement.

I asked the parties for their comments. Mr B accepted and CB did not 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.

CB has not responded, and Mr B has agreed to my findings – so I am not minded to change my provisional outcome.

Putting things right

I think that CB should refund Mr B plus interest for the reasons outlined in my provisional decision (as copied above).

My final decision

I uphold this complaint and direct Clydesdale Bank Plc trading as Virgin Money to refund Mr B £1,168.20 plus 8% simple yearly interest on this calculated from the 21 August 2020 until the date of settlement.

If CB considers it is required to deduct tax from the interest element of my award it should provide Mr B with a certificate of tax deduction so he can claim a refund if applicable.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 March 2023.

Mark Lancod
Ombudsman