

The complaint

Mr M is unhappy how Clydesdale Bank Plc trading as Virgin Money (Virgin Money) handled his request for help to recover money he'd paid for services he was unable to use due to the Covid-19 pandemic.

What happened

Mr M was due to fly abroad with his family in April 2020. Whilst there he wanted to visit some of the main tourist attractions and bought four attraction passes in January 2020 using his Virgin Money credit card. The passes were supplied by a third party, who I'll refer to as N. They could be used at any time during the 12 months following purchase, and they were valid for three consecutive days after first use.

Unfortunately, after Mr M had bought the passes, the planned holiday was impacted by restrictions imposed on the flights and at the destination due to the Covid-19 pandemic. N told Mr M it wouldn't provide a refund, but it did extend the starting date of the passes by a further 12 months. This wasn't acceptable for Mr M, as he said it wasn't going to be possible for the family to travel together again in that time. He asked his insurance company to help, and when they couldn't, he asked Virgin Money to see if he could recover his money through the bank.

It seems that Virgin Money initially raised a chargeback for Mr M and temporarily credited his account. But it appears the chargeback was declined or defended by N as the temporary credit was subsequently removed from Mr M's account. Virgin Money explained that a Section 75 (S75) claim wouldn't be considered as Mr M had requested a refund outside of the cooling off period explained in his booking terms and conditions with N. They also said his claim wouldn't succeed because of the extended availability of the passes. Virgin Money did pay Mr M £50 for the delay in dealing with his claim and a lack of response to some of his correspondence.

Mr M brought his complaint to our service. Our investigator didn't uphold it. He said that he felt the chargeback claim had been raised out of time, and Virgin Money had dealt with that correctly. He also said he thought Virgin Money had acted reasonably by declining the S75 claim. He said the service hadn't been cancelled by N and Mr M wasn't entitled to a refund as per N's terms and conditions. He said he didn't think there had been a breach of contract here.

Mr M didn't agree. He said his planned destination was in full lockdown from mid-March 2020 and remained that way for a few months. He had specified the dates he was going to be using the attraction passes for, and the service wasn't available to him at that time. He maintained that he should be entitled to a full refund. Our investigator responded to Mr M's points. He explained that it was possible that Mr M's contract with N had been frustrated – meaning it had never existed – but that isn't covered by a S75 claim. He continued to say that Virgin Money had acted reasonably.

As Mr M didn't agree, it was passed to me to decide. I issued my provisional decision on 7 March 2023. It said:

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

I'm sure Mr M was disappointed that his trip couldn't go ahead as planned. The circumstances of the pandemic at the time he was due to travel meant that he was unable to visit the destination as he had intended to. It's also the case that the attractions for which the passes were purchased were closed or operating with limitations likely to have affected his ability to use them as planned for at least some part of the 12 months following their purchase.

S75 of the Consumer Credit Act 1974 says that, in certain circumstances, a credit provider can be liable for a misrepresentation of breach of contract claim that the borrower might have against the supplier of goods or services.

Because Mr M used his Virgin Money credit card, he can in certain circumstances claim against Virgin Money as he might otherwise do against N, using the connected lender liability provisions set out in S75. He can also ask the bank to assist him in recovering money from N by means of chargeback, through the relevant card scheme rules, which in this case are set by Mastercard. The circumstances in which Mr M might be able to claim under S75 are rather more limited than are available through chargeback, but from what I've been made aware of in this case I'm satisfied Virgin Money understood it was appropriate to consider both options.

The stated purpose of the contract with N was to allow Mr M permitted access to his selection of attractions over a three-day period, without additional payment, at any time in the 12 months from the purchase date. Proper analysis would have to conclude that, as things turned out, the passes could not be used at any time in the 12 months from the date of purchase. There were periods within those 12 months where the passes could not be used, when attractions were closed during the pandemic. And that was in the period in which Mr M was intending to travel and use the passes.

There are some circumstances where the unavailability of the pass for part of the 12-month period might not cause a problem. But that is dependent on the user having flexibility to travel on alternative dates, so they might make use of the pass at a different time. And the 12-month extension to the 12-month period (while not provided for within the contract) might also be acceptable to some passholders.

But in Mr M's case, he didn't have the flexibility to travel on alternative dates. He has said that the trip was planned for April 2020 as a special trip with members of his family at the only time they could all be available. That was the reason they were going away. The inability to travel defeated the object of the holiday and the purpose of buying the passes. Mr M has at least an arguable case that because the pandemic meant the passes couldn't be used at any time (including when he wanted to use them), the contract with N was frustrated even if it wasn't breached.

That might well mean an attempt to claim under S75 – which can only be brought in relation to misrepresentation or a breach of contract – could not be successful, for different reasons to the ones given by Virgin Money. But it still leaves the question of whether Virgin Money did enough to assist Mr M with his attempts to recover his money via chargeback.

Our investigator has asked Virgin Money for their comments on whether a chargeback was raised, and if it was, what the defence of it was from N. Virgin Money haven't responded to that. Where the information is incomplete, I've based this provisional decision on what I do have and what is known about the chargeback scheme.

Mr M has said that Virgin Money temporarily credited him the full amount paid for the passes when he initially got in touch with them. And, subsequently, this temporary credit was removed. It's not known why this happened, or what prompted Virgin Money to do this.

The card scheme rules provide for a chargeback to be raised on the grounds that goods or services are not as described. As I've explained above, N set out that the passes were available for use at any time during the 12 months following purchase, and there is clear evidence here that for a significant portion of that time they were not.

Our investigator has suggested that Virgin Money re-debited Mr M's account for the passes as he had raised his chargeback out of time. I haven't seen any evidence of that from Virgin Money, And I'm not persuaded that the chargeback had been raised out of time.

The Mastercard chargeback scheme rules say that a chargeback must be raised within 120 days of the latest anticipated delivery or performance date specified by N. The booking terms and conditions for N state that the passes are valid for 12 months following date of purchase, and the passes only become active once they're used at an attraction for the first time. While it's accepted that Mr M stated that he planned to use the passes for the first time on 15 April 2020, he didn't do that. Therefore, the passes remained in use and valid for the entire 12-month period following their purchase.

With that in mind, when Mr M asked Virgin Money to help him recover the money for the passes in September 2020, the passes were still valid, and I'm satisfied he was in time in accordance with the chargeback scheme rules.

It's also worth mentioning that Mastercard published guidance in May 2020 titled 'Dispute Resolution Management During Covid-19' which outlined common scenarios it anticipated arising because of the pandemic. One of the scenarios explained that a chargeback right existed when a merchant (N in this case) cannot provide the service a consumer paid for because of government restrictions.

Restrictions in Mr M's planned destination closed all tourist attractions between March and July 2020. As explained previously, the terms and conditions of the passes enabled Mr M to use the tickets 'at any time' within the 12-month period. But it's clear from the restrictions imposed on the attractions at Mr M's destination that he couldn't use the tickets at any time, and the service wasn't available to him. There isn't anything in the terms and conditions that include any limitations or restrictions on this clause.

The contract Mr M entered with N allowed him access to the attractions. And it seems those attractions were available for some of the 12-month period. I understand Mr M couldn't arrange an alternative date for his trip at a time when the attractions would have been available, but his contract with N was still valid during those times.

Because of the lack of evidence to the contrary from Virgin Money, I'm more persuaded than not that Virgin Money could have pursued Mr M's chargeback claim and, because the attractions were unavailable for approximately 50% of the passes' validity period, they could have raised a chargeback for 50% of the total pass amount. I haven't seen anything to suggest this wouldn't have been successful if Virgin Money had pursued it. It is now too late for Virgin Money to raise the chargeback, so I'm planning to ask them to reimburse Mr M £315.69. I'm also planning to ask them to add 8% simple interest to that amount from the date they re-debited Mr M's account to the date they make this settlement.

Virgin Money have paid Mr M £50 for the delays in dealing with his claim, and for a lack of response to some of his correspondence. Having looked at the evidence I have from both

sides, it's clear Mr M experienced some frustration when trying to speak to Virgin Money about his situation, and to get some clarity on whether his claim would be successful. Because of that frustration, I'm planning to ask Virgin Money to pay Mr M an additional £50 – making this £100 in total.'

Virgin Money didn't respond to my provisional decision. Mr M did. He accepted my findings in general. But he said he had been charged interest on his credit card account when Virgin Money re-debited his account until the date they sent him a response to his complaint, and he felt that should be refunded to him too.

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.

Having done so, I see no reason to depart from the findings of my provisional decision. I'll explain why.

I understand Mr M's comments about the interest he was charged by Virgin Money following the re-debit of the chargeback credit temporarily applied to his account. But I don't feel it would be entirely fair in the circumstances of this complaint to ask Virgin Money to refund it. I've said in my provisional decision that I'm more persuaded than not that Virgin Money could have pursued Mr M's chargeback claim. But I haven't said, and can't say, that it definitely would have been successful.

What my decision sets out to do is recognise that I'm persuaded Virgin Money should have done more to pursue Mr M's chargeback. And I'm satisfied the reimbursement I've explained is the most reasonable way of reflecting this.

My decision is that Virgin Money should pay Mr M £315.69. They must add 8% simple interest to that amount from the date they re-debited Mr M's account to the date they make this settlement. And they should pay Mr M an additional £50 (on top of the £50 they've already paid to him) to recognise the frustration their handling of his claim and lack of response to some correspondence caused him.

My final decision

For the reasons above, I uphold this complaint. Clydesdale Bank Plc trading as Virgin Money must:

- Pay Mr M £315.69.
- Pay 8% simple interest on that amount from the date they re-debited Mr M's account until the date of settlement.*
- Pay Mr M an additional £50 compensation for the delays he experienced when trying to make his claim, and for a lack of response to some of his correspondence.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 April 2023.

Kevin Parmenter
Ombudsman