DRN-4123315

The complaint

Miss S complains about the way Clydesdale Bank Plc trading as Virgin Money handled her request for money back in respect of a hotel booking she made using her Virgin Money credit card.

What happened

In June 2019 Miss S booked accommodation at a hotel I'll call G via an online agent I'll call B for a party of around 24 people. The accommodation was to be used in May 2020. The total cost was £2,630.

Very shortly after the booking was made G contacted Miss S to explain it would require an upfront deposit of 50% which it said "would act as a non-refundable rental deposit". Miss S paid £1,326 to G using her Virgin Money credit card.

In early April 2020 Miss S contacted G to explain she wanted to change the dates of her stay. G told Miss S it would contact B "to cancel other bookings" for her and calculate new rates. Miss S said she looked on B's website but couldn't find the dates she wanted so asked G what would happen to the deposit she paid if she booked directly with it.

When G got back in touch with Miss S it said her deposit was non-refundable and non-transferrable so she couldn't transfer the money she'd paid already towards a new booking. Instead it offered discounted rates for a new booking of around 50% and it said the full cost could be paid on arrival with no deposit required.

On this basis, Miss S made a new booking directly with G in April 2020 for February 2021. G took no deposit from Miss S and confirmed she would need to pay £1,480 on arrival.

In October 2020 Miss S emailed G and asked if she could change the dates of her stay again until sometime in late 2021 or 2022.

G said Miss S couldn't move the booking past February 2021 as it fell into a different "rate plan year". G offered to provide a credit note to Miss S for the deposit she had originally paid to it on the first booking, less B's fees, to be used against a future booking.

Miss S used the credit note to place a deposit against a new booking for September 2021. G confirmed Miss S would have to pay £1,578 upon arrival.

In December 2020 G entered administration. In October 2021 the administrator wrote to Miss S and explained it was unlikely there would be a dividend to unsecured creditors.

Miss S asked Virgin Money to step in and help in October 2021. Virgin Money considered Miss S's claim under Section 75 Consumer Credit Act 1974 ("section 75") but it didn't think it could help. It said that because Miss S had cancelled her original booking and had paid G a non-refundable, non-transferable deposit, this meant it only funded the original booking and was not liable to her for anything that went wrong with the subsequent bookings she made with G.

Unhappy with Virgin Money's response and having not received a final response letter in respect of her complaint about this, Miss S referred the matter to this service.

After this Virgin Money issued a final response letter. It said it was still not going to meet Miss S's claim but offered to pay her £75 as a gesture of goodwill. Miss S did not accept this offer.

I issued a provisional decision in May 2023 setting out why I didn't plan to uphold Miss S's complaint. I said,

> *'I am looking here at the actions of Virgin Money and whether it has acted fairly and reasonably in the way it handled Miss S'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 card scheme rules a bank must follow and its own obligations.*
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> *There are two main ways a bank can help a customer 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 its customer has a valid claim under Section 75 Consumer Credit Act 1974 (Section 75).*
>
> *Chargeback*
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> *In certain circumstances the chargeback process provides a way for a bank to ask for a payment a customer made to be refunded. Where applicable, the bank raises a dispute with the supplier and effectively asks for the payment to be returned to the customer. While it is good practice for a bank to attempt a chargeback where the right exists and there is some prospect of success, the circumstances of a dispute means it won't always be appropriate.*
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> *The relevant card scheme rules set out that Miss S could raise a chargeback if (among other things) services she'd paid for hadn't been supplied to her or if a credit hadn't been provided when it should have been.*
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> *Looking at what happened here, Miss S agreed with G on two separate occasions that it would cancel the bookings she had made and that it would make new bookings for new dates. She forfeited her deposit on one booking and accepted that she'd take a credit note on another. This appears to be different from a case of simply amending the dates of the same booking twice.*
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> *It appears therefore (Miss S only having used her credit card to pay the deposit on the original booking and that agreement having come to an end upon cancellation) that Miss S's credit card payment did not fund the last agreement she made with G. It was unlikely therefore she'd have had grounds to raise a chargeback in respect of that agreement.*
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> *This is relevant because the last agreement Miss S entered into with G was the only agreement where G was unable to provide its services (as a result of going into administration) and therefore was likely the only transaction that Miss S had any reasonable prospect of charging back.*
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> *I say this because when Miss S agreed with G that it would cancel her bookings in April 2020 and October 2020 it wasn't clear yet that her visits in May 2020 or*

February 2021 would be unable to go ahead – the UK government hadn't yet extended the Covid-19 lockdown rules that far ahead. So, I don't think it could be said that G was unable to provide its services at those points.

It seems likely therefore that a chargeback raised for services not provided would have been defended on the basis the services were available at the time Miss S cancelled them. There do not appear to have been grounds either to raise a chargeback for where a credit hadn't been processed because Miss S was not entitled to a refund of her deposit in the event she cancelled her stay.

This aside, it's likely Miss S would have encountered further problems with chargebacks on these transactions. The relevant scheme rules make it conditional that a chargeback must be raised within 120 days of the last expected date of delivery – which in this case would have been the dates Miss S was due to stay at the hotel. Miss S didn't make Virgin Money aware of her dispute until October 2021. So, its likely chargebacks for services not provided would also have been defended on the basis they had been raised too late.

Overall therefore, although Virgin Money didn't raise a chargeback in this case, it doesn't appear there was a reasonable prospect of one succeeding. So, I don't find Virgin Money treated Miss S unfairly by failing to do this.

Section 75

Section 75 provides that subject to certain criteria 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.

One of those criteria was that Miss S's claim had to relate to a transaction financed by a debtor-creditor-supplier ("DCS") agreement. In other words, given Miss S's claim here, it had to relate to a transaction between either her and G or her and B that was financed by her Virgin Money credit card.

Miss S paid the deposit to G using her Virgin Money Credit card and didn't pay anything to B. This means Virgin Money didn't likely finance whatever transaction there may have been between her and B.

Nevertheless, B's contract set out that Miss S had entered into a separate contract with G for the provision of its services (i.e. the hotel rooms). So, it appears Virgin Money did likely finance a transaction between Miss S and G in June 2019 for the provision of accommodation to her in May 2020. I'll call this agreement one.

As I've said earlier in this decision, during the course of Miss S's dealings with G in April 2020, she agreed with G that on the basis the existing dates were no longer suitable for her, it would cancel her booking made via B for her and make a new one, directly with it, for February 2021.

Miss S then changed the dates again with G from February 2021 to September 2021. It appears from communications between Miss S and G that she had to cancel the booking again in order to do this as it was not possible to simply transfer the existing booking to a new date. G offered Miss S a credit note of around £800 to put towards the third booking with it.

I think all of this meant three things. Firstly, agreement one had likely been brought to an end at the request of Miss S in April 2020. Secondly, Miss S entered into a new

agreement in April 2020 for the February 2021 booking (I'll call this agreement two). Thirdly, Miss S cancelled agreement two in October 2020 and entered into a third agreement for September 2021, paid for in part using the credit note that G had provided (agreement three).

I remind myself again that Miss S's claim had to relate to a transaction between her and G that was financed by Virgin Money. I think it's likely in this case that the only transaction Virgin Money financed was agreement one and not agreements two or three. In other words, there was only a DCS agreement in respect of that first agreement.

However even if agreement two was in fact an amendment to agreement one rather than a whole new agreement, by the time Miss S asked to change the dates again in October 2020 I think G had made it clear that it couldn't accommodate a simple date change and that a new booking would need to be made – which she secured using a credit note G had provided. I think this made it even more unlikely that Virgin Money financed agreement three as the deposit she paid had become even more detached from the transaction by this point.

As an aside on that point, while the issuing of the credit note when Miss S cancelled agreement two might appear inconsistent with G's explanation that the deposit from agreement one was non-transferable, it seems likely this was offered as a gesture of goodwill rather than something it was obliged to do by the terms of its contract with Miss S in the event of cancellation by her. So, I don't think it meant that Miss S's initial deposit paid in respect of agreement one funded agreement three.

I don't find therefore that Virgin Money was being unreasonable when it told Miss S that it had limited its assessment of her claim to the transaction it considered it had financed.

I've considered whether Virgin Money made a fair assessment of whether there had been a breach of contract or misrepresentation on the earlier agreements. There has been no suggestion of a misrepresentation. And there doesn't appear to have been a breach of contract either. Miss S agreed with G that it would cancel agreements one and two. And in accordance with what it was permitted to under the terms of its contract with her, it kept her deposit upon cancellation. Any agreements made after this as to the price of a new booking or the issuing of a credit note appear to have been made as gesture of goodwill by G and not something it was contractually obliged to do.

It's very likely that G's failure to provide the accommodation as a result of it entering into administration would have been a breach of agreement three. But this happened on an agreement that wasn't funded by Virgin Money because Miss S didn't make any payments towards that agreement using her credit card. So, it's unlikely Miss S had a valid claim under section 75 in respect of that agreement. I don't find therefore that Virgin Money treated Miss S unfairly when declined to meet her claim.

I know this will be incredibly disappointing for Miss S. I really do sympathise with her that through no fault of her own, she's lost her deposit. But it wouldn't be fair to require Virgin Money to refund Miss S's deposit if I didn't think it had treated her unfairly by declining to meet her claim. And for the reasons I've explained, I don't think it did.

Virgin Money offered Miss S £75 as a gesture of goodwill in its final response letter. It's not entirely clear what this for. However, having considered how long it took

Virgin Money to consider Miss S's claim and the likely distress and inconvenience this would have caused her, I think Virgin should still pay this to Miss S, if it hasn't already.'

Miss S disagreed with my provisional decision. She said she called Virgin Money as soon as she learned G had gone into administration in December 2020 but was told she'd need to call back after the date her stay was due to take place. So, she said she contacted Virgin Money in time for it to raise a chargeback.

Virgin Money said it didn't have any additional or comments save to confirm it had paid the £75 referred to in my provisional decision to Miss S in September 2022.

The complaint was therefore passed back to me for a final 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've thought about Miss S's comments about chargeback. I explained in my provisional decision that the only transaction Miss S could likely have raised a chargeback on was the first one (i.e. the booking for May 2020 made in June 2019) as that's the only booking that she paid for using her credit card. That particular booking was brought to an end by agreement between Miss S and G in April 2020.

That meant Miss S had 120 days under the card scheme rules from May 2020 at the latest to raise a chargeback. So even if I were to accept that Miss S made contact with Virgin Money when she said she did in October 2020, there was still a strong chance the chargeback would not have succeeded on the grounds it had been brought too late.

I also explained in my provisional decision that because the service was still available for Miss S to use at the point in time she cancelled it in April 2020 and because she wasn't entitled to a refund of her deposit in the event she cancelled, it was unlikely a chargeback would have succeeded even if it had been raised in time. I've not been provided with anything that makes me see this any different.

I can understand why Miss S is disappointed by my conclusion. As I said in my provisional decision, I sympathise that she's lost out through no fault of her own. But the right to a refund in her circumstances is not automatic and there still needs to be a reason why Virgin Money was liable to her for a refund – which unfortunately for Miss S, it appears there isn't in her case.

So, for the reasons I have explained here and in the extract of my provisional decision above, I still don't find Virgin Money treated Miss S unfairly by declining to meet her claim for a refund of her hotel deposit.

Virgin Money said it already paid the compensation of £75 I discussed in my provisional decision to Miss S in September 2022. The communications I've seen suggest Miss S declined to accept this. So, if Virgin Money hasn't in fact paid this sum to Miss S yet then it should do so.

My final decision

For the reasons I have explained above, Clydesdale Bank Plc trading as Virgin Money should pay Miss S compensation of £75 for the distress and inconvenience it caused her (if it

hasn’t already done this). I do not require it to do anything else.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss S to accept or reject my decision before 15 June 2023.

Michael Ball
Ombudsman