

The complaint

Mr R complains that Clydesdale Bank Plc trading as Virgin Money won't reimburse money he paid using his credit card for a holiday that didn't go ahead.

Background

I recently issued a provisional decision, which I've reproduced below and is incorporated as part of this final decision. I set out the events leading up to this complaint and how I thought matters were best resolved. I invited both parties to let me have any further comments they wished to make in response. I'll address their responses later in this decision.

"What happened"

Mr R booked a holiday involving flights and hotel accommodation. The arrangements were made through an online travel company ("O"). Mr R paid O two separate amounts to cover the full cost using his Virgin Money credit card.

The holiday was scheduled to take place in early December 2021. On 6 October the airline "K" got in touch with Mr R to say it had cancelled the original flight schedule, providing revised booking arrangements for the same dates. Mr R didn't raise any objection to this change. However, on 30 November K contacted Mr R again to say that for operational reasons it had cancelled his flights. K said it would send updated flight details shortly.

By this point Mr R had become increasingly concerned over the impact of a new variant of Covid-19. He told O he wanted to cancel the holiday arrangements. O cancelled the flights, but initially said it had no record of the hotel booking, later saying it was booked through a different company (albeit one that appears to be part of the same trading group). Mr R received a refund for his flights but remained out of pocket for the cost of the hotel booking; some £375.13.

He turned to Virgin Money to see if he could recover his money through his card provider. Virgin Money attempted to use the chargeback process operated by the card scheme. But O defended the claim saying that the terms of booking provided at point of sale made clear that it was non-refundable. Virgin Money told Mr R it couldn't assist further, either by chargeback or under connected lender liability provisions of section 75 of the Consumer Credit Act 1974. It said the involvement of a third party in the accommodation arrangements (the hotel was not operated by O) meant that section 75 didn't apply to the transaction.

Mr R complained to Virgin Money about its stance, and subsequently referred his complaint to us.

Our investigator didn't think Virgin Money had dealt with Mr R's claim correctly. She found that the travel services Mr R booked amounted to a package travel contract under which O was the operator and carried responsibility for performance. That gave rise to a potential breach of contract liability on Virgin Money's part under section 75. However, the

investigator felt that, as the hotel was still operating at the point Mr R chose to cancel the booking, the contract hadn't been breached. For similar reasons she was satisfied that Virgin Money had acted appropriately by raising – but not pursuing – the claim via chargeback.

Mr R didn't accept the investigator's conclusions and has asked for this review.

What I've provisionally 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, like our investigator I'm not persuaded that in considering Mr R's claim, Virgin Money considered whether the travel services Mr R booked constitute a package holiday. Virgin Money's response to the claim (and to Mr R's subsequent complaint) don't mention the additional rights afforded to him by the Package Travel and Linked Travel Arrangements Regulations 2018 ("Package Travel Regulations") over and above those set out in the contracts arranged with O.

This should be a material factor in Virgin Money's consideration both of the chargeback defence submitted by O and its own potential liability under section 75. Although our investigator didn't think Part 3, Regulation 12 of the Package Travel Regulations applied in the circumstances, Regulation 11 also implies a term into Mr R's contract with O that has (among other things) the effect of requiring O to inform Mr R, without undue delay, of any significant change to the travel services.

Cancellation of the flight booking was undoubtedly a significant change. While Mr R received notification of this from K, there was no information to indicate when the substitute flights would be scheduled (as was the case with the first cancellation). So I can't find that O met its contractual obligations towards Mr R.

A further provision of Regulation 11 means that in such circumstances Mr R was entitled to terminate the contract and receive (without undue delay and within 14 days of termination) a full refund of all payments he made for the package. Taking all of this into account, there's no apparent reason why Mr R would not have been entitled to rely on the Package Travel Regulations provisions to terminate the package and receive from O a refund of all his payments. Again, O hasn't provided this and would therefore appear to be in breach of the term implied into its contract with Mr R.

As such, I consider that Virgin Money could – and should – have done more to question O's chargeback response saying that Mr R was not entitled to his money back on the basis that the booking terms said it was not refundable. That position doesn't appear to be supported by the relevant legislation, which forms part of the booking terms.

Had Virgin Money taken this into account in the chargeback claim, I consider there was a good possibility of it being successful. Even if Virgin Money decided not to progress a chargeback claim, it was still the case that the provisions of Regulation 11 are implied as a term of Mr R's package travel contract. Virgin Money's obligations under section 75 would make it jointly and severally liable as a breach of contract for failure to provide a full refund to Mr R under this provision.

It's not for me to speculate as to K's reasons for the flight cancellation, or whether Mr R would have been offered acceptable alternative flights had he not cancelled the booking. Mr R's decision might well have been influenced by his concerns over the Covid-19 risk, but that doesn't mean he wasn't entitled to cancel the booking under Regulation 11.

Further, O appears to have accepted he was so entitled. It agreed to refund the flight costs. The (incorrect) reason it gave Mr R for not also refunding the hotel booking was that the booking wasn't made with it.

It follows that I'm minded to conclude there were deficiencies in the way Virgin Money approached Mr R's claim that led to him being treated unfairly. In light of this it would be appropriate for Virgin Money to address Mr R's financial loss, and to compensate him for the added difficulty he's faced in pursuing his claim due to the way it handled the claim."

I proposed that Virgin Money reimburse (with interest) Mr R's remaining loss of £375.13, and pay him £100 as compensation for his distress and inconvenience caused by its handling of the claim.

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.

Both Mr R and Virgin Money accepted my provisional findings, and were broadly in agreement to the proposed settlement. I therefore adopt them in full into this decision.

Mr R did query the basis of the interest calculation, which I have clarified in separate correspondence with him. I'm also conscious that in his acceptance Mr R expressed disappointment with the amount I proposed for his distress and inconvenience.

In light of this, I do want to acknowledge the efforts Mr R went to in order to demonstrate his claim, and it's not my intention to understate this, or the impact on him of doing so. I also want to assure him I've noted the comments he's made about the way in which Virgin Money sought to defend the claim, which he considered unprofessional and unacceptable.

Of course a bank is entitled to defend a claim, though it should do so fairly and with due regard for its potential liability. And I do think that Virgin Money could have done a better job of dealing with Mr R, which is why I proposed to award compensation for the difficulty this caused him. But I don't have any power to fine a firm, and our awards aren't intended as a punishment, but to recognise when a business has put a complainant to avoidable difficulty.

Having considered the overall impact Virgin Money's handling of matters had on Mr R, I'm satisfied the £100 I proposed remains an appropriate sum in compensation.

My final decision

My final decision is that I uphold Mr R's complaint.

To settle it, Clydesdale Bank Plc trading as Virgin Money must now take the following steps:

1. pay Mr R £375.13, representing his outstanding loss on the package holiday
2. pay Mr R interest on the amount in 1., calculated at 8% simple annually from 17 February 2022 (being the date it declined to meet his claim) until the date it pays this settlement

If Virgin Money deducts tax from the interest element of my award, it should confirm to Mr R that it has done so and provide him with the relevant tax deduction certificate

3. pay Mr R £100 in recognition of his distress and inconvenience

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or

reject my decision before 17 November 2023.

Niall Taylor
Ombudsman