

## The complaint

Ms C has complained about the way Clydesdale Bank Plc trading as Virgin Money dealt with her claim for money back.

## What happened

To summarise, Ms C went abroad and entered into a vacation club membership agreement with a company I'll call "L" on 18 July 2022. I understand she was required to make an initial payment of around \$1,195USD using her Virgin Money debit card for an administration and contract fee on the day she entered into the agreement. She also gave authorisation for further payments to be taken using her debit card. Payments of \$3,678USD in September and October 2022 followed by instalments until she'd paid the total cost of \$15,000USD.

The contract with L said:

*A cancellation by the Member can take place in writing, within four (4) calendar days of the date of signing this Agreement. The written request shall be executed by all of the signatories, without exception. An approved cancellation is subject to the payment of all services and benefits received after utilized at a non-members rate pursuant to the execution of the Agreement. The tax and Administration Fee and Contract Fee of the Agreement are non-refundable and shall be added to the total sum of the invoices received for all services and benefits utilized as a Member.*

Ms C said she changed her mind about proceeding with the purchase and so submitted a handwritten cancellation notice she and a representative of L had signed. She said she was told she'd lose the payment she'd made the previous day (\$1,195USD), and said she was upset, but accepted it because she was abroad.

In October 2022, Ms C says she was surprised to see L had taken £3,398.33 using pre-authorisation on her debit card and she contacted Virgin Money to say the transaction wasn't authorised.

Virgin Money said it raised a chargeback for Ms C and the merchant responded (representment) on 18 October 2022 disputing it. Virgin Money said it contacted Ms C about the merchant representment on 10 November 2022 with the representment documentation and asked for a response by 17 November 2022. Virgin Money said Ms C responded to say she was on holiday at the time but that she had a copy of the cancellation letter she could provide when she was back. Virgin Money said she supplied a copy on 28 November 2022, and it took the case to what's known as pre-arbitration on the same day. Virgin Money said it had to allow until 30 December for the merchant to respond. Virgin Money said due to Christmas, this wasn't picked up so when it tried to escalate the case to arbitration it was out of time.

Virgin Money wrote to Ms C on 6 January 2023 to say the claim hadn't been accepted and that it had taken it as far as it could go, so it wouldn't take any further action. Ms C complained. She was unhappy such a large amount left her account without further checks from Virgin Money. She reiterated she'd terminated the contract. Virgin Money sent a final

response in February 2023 saying it had done everything in its power and it didn't uphold the complaint. While not mentioned in the final response I understand Virgin Money had also paid her £150 during the claim. Ms C says this was because it had not logged information correctly.

Ms C referred her complaint to the Financial Ombudsman. One of our investigators looked into things and said he thought Virgin Money should reimburse Ms C the amount that was debited from her account – £3,398.33, together with interest if applicable. He said Ms C had evidenced she cancelled the service within the stipulated timescale.

Virgin Money didn't agree. Initially it said there was no evidence the cancellation form had been received by L. It didn't think a copy of the handwritten letter was sufficient. Our investigator pointed out a representative from L had signed the letter. But Virgin Money responded to say the representative hadn't printed their name underneath along with the date. It said L hadn't mentioned the cancellation form in its representation, and that if it had received it the claim would have been upheld.

As things weren't resolved, the complaint has been passed to me to decide.

### **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 want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Ms C and Virgin Money that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

I first want to say I'm sorry to hear Ms C felt misled and let down with regards to the membership purchase. I appreciate it cost a significant sum, and I can't imagine how she must have felt.

What I need to consider is whether Virgin Money – as a provider of financial services – has acted fairly and reasonably in the way it handled Ms C's request for getting money back. It's important to note Virgin Money isn't the supplier. I've gone on to think about the specific card protections that are available. In situations like this, Virgin Money can consider raising a chargeback.

The chargeback process provides a way for a card issuer to ask for a payment to be refunded in certain circumstances. The chargeback process is subject to rules made by the relevant card scheme. It's not a guaranteed way of getting money back.

While it's good practice for a card issuer to attempt to chargeback where certain conditions are met and there's some prospect of success, there are grounds or dispute conditions set by the relevant card scheme that need to be considered. If these are not met, a chargeback is unlikely to succeed. And something going wrong with a merchant won't always lead to a successful claim.

Virgin Money raised the chargeback for Ms C, which was defended by the merchant. It also put the case to pre-arbitration and said it submitted Ms C's copy of the cancellation letter. I think this was fair of it. The question really is whether it ought to have taken the case to arbitration.

The evidence isn't definitive. On the one hand, Virgin Money's contact notes indicate the case was taken to pre-arbitration on 28 November 2022. The next note is on 3 January 2023 that says *no resp to pre arb escalated today*. And there's another note that day that I think says it was out of time to escalate and that it needed to see if it should write-off or re-debit. But on the other hand, Virgin Money has supplied a copy of what it says is the merchant's response to the pre-arbitration. The response broadly seems the same as the initial response to the chargeback. I can't see any mention of the cancellation letter. It seems to focus its response on the transaction being authorised.

Ms C has supplied a copy of the cancellation letter, which she says was signed by a representative from L. The signature on the letter from L's representative appears similar to other signatures on paperwork issued by L. I appreciate Virgin Money says it didn't have the name printed and dated underneath, but it's not clear that was required within the cancellation terms. Those terms just say the form needs to be executed by all the signatories.

Putting that to one side, it looks like Virgin Money thought there may have been a reasonable prospect of success for the chargeback which is why it submitted the further evidence. I think it was planning on escalating it but said due to Christmas it missed the deadline. I think it's important to note I've not seen any submissions from L in the pre-arbitration response that deal with the cancellation letter evidence. It seems like had it not been Christmas, Virgin Money was willing to put the claim to arbitration. I'll never know what would've happened had it done so. But, based on what I've seen, I think there'd have at least been a reasonable prospect of success. It seems unfair that Ms C lost out on that opportunity because Virgin Money couldn't submit the claim on time. So I therefore agree that, on balance, it's fair for Virgin Money to treat the claim as if it was successful.

### **Putting things right**

I can see Ms C mentioned Virgin Money paid her £150 because information she'd sent in had not been logged correctly. I think that was fair. I'm not going to make a further award for compensation. I agree with our investigator that Virgin Money should rework the account as if the £3,398.33 was not re-debited for the final time. This includes reworking any interest applied as a result of any debit balance and removing any adverse information from Ms C's credit file that otherwise wouldn't have been recorded. If the reworking of the account results in a credit balance, it should add 8% a year simple from the date the credit balance arose, to the date of settlement.

If Virgin Money considers it is required to deduct tax from my interest award it should provide Ms C a certificate of tax deduction so she may claim a refund from HMRC, if appropriate.

### **My final decision**

My final decision is that I uphold this complaint and direct Clydesdale Bank Plc trading as Virgin Money to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 15 April 2024.

Simon Wingfield  
**Ombudsman**