

## **complaint**

Mr R complains that Clydesdale Bank Plc trading as Virgin Money won't refund a payment made on his credit card to a secondary ticket selling website ("the Website") for a ticket to an event abroad.

## **background**

In June 2017 one ticket was purchased through the Website to attend an event abroad taking place in August 2017 using Mr R's Virgin credit card. The total cost charged to his card was £3456.53. This purchase was part of a group of purchases for the same event by a group of people intending on attending the event together. But due to the costs of the tickets had been purchased by a number of individuals.

Mr R's brother was the account holder with the website through which the purchase was made. Mr R was the account holder for the credit card and authorised his brother to make the transaction to buy the ticket on his credit card. A confirmation email was received which included a delivery charge for the tickets to be delivered to his home address.

After that the website then wrote to Mr R's brother to say that the ticket couldn't be delivered and would have to be collected at the box office of the event abroad. But Mr R and the rest of the group didn't want to travel without having possession of the ticket due to the substantial travel and accommodation costs. So they complained to the Website. But the Website felt it hadn't done anything wrong. So Mr R complained to Virgin.

Virgin looked into the matter, but it didn't think it could help. This was because it didn't think it could pursue a chargeback because it didn't have a reasonable prospect of success in its view. It also thought a Section 75 claim under the Consumer Credit Act 1974 should be unsuccessful. So it didn't think it could do any more for Mr R.

Mr R didn't think this was fair, particularly as within his group of people attending the event there have been cases of other banks refunding transactions for the same event. So he brought his complaint to our service.

Our investigator looked into the matter. Overall, she didn't think Virgin had acted unfairly by declining Mr R's request for a refund. Mr R didn't agree. So the complaint has been passed to me to decide.

## **my findings**

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

I should make very clear that this decision is not about the secondary ticket selling Website, which isn't a financial service provider and so doesn't fall within my remit. Nor is it about the original purchaser of the ticket who then decided to sell the ticket through the secondary ticket selling Website (which was then bought in this case).

I should add that this decision is only about whether Virgin has treated Mr R fairly in not refunding the transaction. I appreciate Mr R points to evidence of similar issues with other banks within the group of people buying these tickets here. However those are different

circumstances and different decisions by those businesses, and I can only decide in this decision whether Virgin has treated Mr R fairly or not.

I can see from Mr R's representations to the Investigator that they are (understandably) focusing on the behaviours of the website. However whatever issues there maybe with the website's behaviours over time it doesn't necessarily follow that Virgin has treated Mr R unfairly. And as I've said that's the only thing I can decide on in this decision.

*authorising the transaction*

Mr R says his brother had the account with the Website and was authorised by him to make the purchase made here using Mr R's credit card. This service has built up a knowledge of the website's processes over a number of years. So considering what Mr R has said and that his complaint is primarily about the delivery of the tickets I think the transaction was properly authorised and Virgin correctly applied this charge to Mr R's credit card account.

*could Virgin challenge the transaction through a chargeback?*

In certain circumstances, when a cardholder has a dispute about a transaction, as Mr R does here, Virgin (as the card issuer) can attempt to go through a chargeback process.

Indeed, we're aware of cases, with some similar features to this one, where a chargeback has been successful. But I should add that card providers and indeed merchants may decide to refund the cardholder for a variety of reasons including goodwill, commercial pragmatism and other reasons along with outcome of the chargeback being successful through the actual chargeback process. So the cardholder receiving a refund doesn't necessarily mean that card issuers should refund every transaction similar to this one. Indeed Mr R points to cases where refunds have been made. But as I say just because one bank makes a refund doesn't mean other banks haven't acted fairly in not making a refund.

I don't think Virgin could've challenged the payment on the basis Mr R didn't properly authorise the transaction, given the conclusions on this issue that I've already set out.

Virgin is required to consider whether there is a reasonable prospect of success when it is considering whether to go through the chargeback process or not. If it does go through the process, then it must do so properly. The supplier (the Website) would then receive that chargeback request and may agree to refund the payment or may contest the chargeback. If it contests, then Virgin should consider this and then if it still feels the chargeback is warranted then it can take the chargeback further and ultimately to the scheme provider (not Virgin) who will then make an independent determination on the matter. So Virgin isn't solely responsible for the decision whether to refund or not when going through the chargeback process. And it can decide to not proceed at any stage if it doesn't think there is a reasonable prospect of success.

The chargeback process includes reason codes for making the chargeback, "*goods not as described*" would be such an example. Virgin says it considered the chargeback reason codes and didn't think any would have a reasonable prospect of success. Its thinking included the argument that the terms and conditions of the Website stated that tickets could be delivered to the box office/event venue in certain circumstances. So Virgin decided that Website hadn't done anything wrong in changing the delivery process. So it didn't think making a chargeback request had a reasonable prospect of success. So considering what it

knew and the overall circumstances here, all in all, I don't think Mr R has lost out due to Virgin's approach to chargeback here.

*how about the Consumer Credit Act 1974?*

The transaction was made using Mr R's Virgin's credit card. Under section 75 of this Act, in certain circumstances, he has an equal right to claim against Virgin as he does against the supplier (the Website) if there's been a breach of contract or misrepresentation by the supplier. In summary section 56 has the effect of making Virgin responsible during the "antecedent negotiations" leading up to Mr R entering into the agreement. In essence this means Virgin can be held responsible for the things that were done or said during the sales process before agreement was reached.

For a valid claim under this legislation there must be a debtor-creditor-supplier arrangement in place. This is often referred to as the 'DCS relationship' or simply 'DCS'. This means there needs to be the necessary three-party relationship. This often looks like:

- A debtor (who makes repayments to the creditor for the borrowing for the purchase)
- A creditor (who has to send the borrowed amount direct to the supplier)
- A supplier (who has to provide what was purchased to the debtor)

This means the person who paid for the goods, the debtor, should have a contractual relationship with the company who supplied the goods, as well as with the credit provider, the creditor. But this isn't the case here. It was Mr R's credit card account that was used to pay for the transaction, but it was Mr R's brother's account on the website purchasing the tickets. So although Mr R financed the transaction he isn't the purchaser of the ticket-his brother was. So in essence Mr R is a fourth party in this situation.

I've reviewed the Website's terms and conditions which explains that in order to be able to use its services account holders must agree to its terms. It also says they will not allow customers to buy tickets unless they have registered with their service. In this case it was Mr R's brother's account that was used to complete the purchase, so it is Mr R's brother who entered into the contract with the website as he registered with them and also agreed to their terms when he completed the purchase.

Accordingly I'm satisfied that there isn't the necessary DCS relationship present to make Virgin responsible under this legislation. And thus it is fair that Virgin isn't responsible for any failings by the Website. So Mr R's complaint here fails.

For the sake of completeness I'll address some of the other arguments that have been made. It is not wholly clear what happened here and why the tickets couldn't be delivered to the home address rather than the event venue. But as the Website's terms and conditions make clear the website provides the marketplace to buy and sell tickets and the guarantee around the tickets. It isn't responsible for the provision of the tickets themselves. It isn't clear whether the original seller of the ticket dropped out of the sale and the website guarantee kicked in to provide the ticket or whether the logistics of the delivery of the ticket became threatened due to time constraints. Either way the terms do allow for tickets to be delivered to the venue. So I don't think Virgin made a mistake here in not refunding the ticket. Mr R points to the terms regarding delivery method-but this is a requirement on the seller to abide by this. But the guarantee the website offers doesn't include such a requirement on the website-just the provision of the ticket within its terms, which it did do.

I appreciate Mr R's comments about being unwilling to travel without possession of the ticket but there is no evidence showing the ticket wasn't available for collection. And Mr R did have the option of relisting the ticket on the website.

I also appreciate Mr R can point to two other businesses refunding in very similar situations. And I understand that to his mind this makes Virgin's position look unfair. However I've considered its approach throughout here and don't think it has acted unfairly. I think that Mr R hasn't lost out here as I think Virgin made a fair decision in not taking the chargeback issue further. I'm satisfied the necessary relationship (DCS) isn't in place here so Virgin cannot be held liable for any breach or misrepresentation by the Website. And I think Virgin correctly applied the cost of the tickets to Mr R's credit card account. So I don't think I can fairly require Virgin to refund Mr R for the tickets.

**my final decision**

For the reasons set out above, I do not uphold the complaint against Clydesdale Bank Plc trading as Virgin Money.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr R to let me know whether he accepts or rejects my decision before 9 September 2021.

Rod Glyn-Thomas  
**ombudsman**