

The complaint

Mrs M complains that Clydesdale Bank Plc trading as Virgin Money hasn't done enough to assist her in recovering money she paid to a third party supplier using her credit card.

What happened

Mrs M is a sole trader who runs a clothing retail business. She used her Virgin Money credit card to pay an overseas supplier "S". After Mrs M received and sold on some of the clothes, she started to receive complaints from her customers about them. Mrs M identified problems with mislabelling and the overall condition of the items. She got in touch with S, but was unable to get very far in pursuing matters. Mrs M turned to Virgin Money to see whether she could recover her money through the bank.

After several months' delay, in recognition of which Virgin Money offered £100 compensation, the bank attempted to use the chargeback mechanism within the card scheme rules to see if it could recover Mrs M's money.

According to Virgin Money's records, S defended the claim saying the contract between S and Mrs M required that she report any problems with the items within two weeks of receiving them. Virgin Money later informed Mrs M of the position, and while she sought to appeal the outcome, the bank's position ultimately remained unchanged. She referred her complaint to us.

I recently issued a provisional decision to both parties setting out the background to this complaint and how I considered matters were best resolved. In summary, my provisional findings were:

- Some aspects, such as the delay on Virgin Money's part in dealing with matters, and the condition and labelling of the goods S supplied to Mrs M, weren't really in dispute. The main issue that was unresolved was the extent to which Virgin Money was responsible for Mrs M remaining out of pocket
- The transaction between Mrs M, Virgin Money, and S met the requirements of section 75 of the Consumer Credit Act 1974, even though she'd used her personal credit card for business purposes. So she could bring a claim against Virgin Money
- The circumstances of the transaction presented several difficulties in concluding that such a claim – whether in misrepresentation or in breach of contract – could succeed. I hadn't seen evidence about anything S had said or done that had induced Mrs M to contract with it. Mrs M hadn't provided a copy of her contract with S, and given S's overseas location I couldn't be satisfied that there were terms implied into the contract relating to the quality and description of goods supplied, such as might be provided for under English Law
- While Mrs M had referenced having to refund her customers and being left with unsaleable stock, she hadn't been able to set out in clear terms the amount of any loss she incurred

- It had been open to Virgin Money to assist Mrs M in recovering payment by pursuing the chargeback claim more vigorously than it did. The reasons it had given for not doing so weren't in my view sufficiently persuasive. Given the evidence Mrs M had provided to it, the claim had a reasonable prospect of some success. Mrs M was to some extent disadvantaged by the fact Virgin Money didn't look to pursue the chargeback fully, so it would be fair for the bank to compensate her in part for this
- Virgin Money had already accepted that it took much longer than it should have to deal with Mrs M's claim. After Virgin Money instigated the chargeback claim there were more delays in its handling of matters. This added to Mrs M's frustration and concern. She should receive increased compensation for this.

I proposed that to settle matters, Virgin Money should pay Mrs M £1,000 – with interest – to reflect a proportion of the money she'd lost, and £300 (inclusive of any amount previously paid) in recognition of the distress and inconvenience she's experienced due to the delays.

I invited both parties to let me have any further comments they wished to make in response to my intended conclusions.

Responses to my provisional decision

Virgin Money acknowledged my intended decision. It said that while it didn't completely agree with some of my conclusions, it was willing to proceed with the resolution I proposed. Virgin Money said that in the absence of other instruction, it would calculate the interest element of the award from 17 April 2023. This was the date on which it redebited Mrs M's account after deeming her chargeback claim had been defended successfully.

Mrs M didn't have any further evidence to submit. However, she also raised a query in relation to the treatment of interest on her account during the period of the dispute. She said she'd initially been on a 0% interest rate, and that in the course of dealing with matters this had ended and she'd incurred a significant amount of interest. Mrs M felt that this should be refunded as part of the settlement.

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.

Neither of the responses from the parties gives me cause to reach a different conclusion on any of the findings I set out in my provisional decision. I therefore adopt them in full in this final decision.

That leaves the issue of how best to put things right – in other words, what Virgin Money needs to do to resolve matters fairly. No further evidence has been submitted that might lead me to conclude that the £1,000 refund is an appropriate amount. And I remain satisfied that the £300 I proposed in respect of Mrs M's time and trouble, which for the avoidance of doubt includes the £100 Virgin Money originally proposed, is a fair sum in recognition of this.

I consider Virgin Money's suggestion and reasoning in respect of the dates it should use for calculation of the interest due on the £1,000 refund, being from 17 April 2023 until the date of settlement.

Other than this, I'm not minded to require Virgin Money to refund interest that it has charged on the transaction. It lent Mrs M the money to fund the purchase she was making, and it was

entitled to charge interest on that lending in line with the credit agreement. I appreciate Mrs M had perhaps anticipated being able to repay the balance from business sales. But I don't consider the fact things didn't work out that way obliges Virgin Money to waive its right to interest on the money she borrowed.

My final decision

For the reasons set out here and in my provisional decision, my final decision is that to settle this complaint, Clydesdale Bank Plc trading as Virgin Money must now take the following steps:

1. calculate 8% simple annual interest on £1,000 for the period 17 April 2023 until the date it makes this settlement
2. credit £1,000 to Mrs M's account, along with the amount of the calculation in 1. above
3. pay, not credit, Mrs M £300 (inclusive of £100 previously paid) in recognition of her distress and inconvenience

If Clydesdale Bank Plc considers that it's required by HM Revenue and Customs ("HMRC") to deduct income tax from that interest, it should tell Mrs M how much it's taken off. It should also give Mrs M a tax deduction certificate if she asks for one, so she can reclaim the tax from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 6 August 2024.

Niall Taylor
Ombudsman