

The complaint

Mr M complains about the way in which Clydesdale Bank Plc trading as Virgin Money handled his disputed transaction claim.

What happened

In June 2022 Mr M entered into an agreement with a merchant ("E") to rent a car. He paid £414.59 using his Virgin credit card and signed the rental agreement.

In October 2022 Mr M discovered that £220 had been debited from his Virgin Money account by E. This was in relation to four speeding tickets issued to Mr M whilst he was driving the rental car.

Mr M disputed the charges but was unable to resolve matters with E so he raised a disputed transaction claim with Virgin Money.

Virgin Money considered the disputed transaction claim under chargeback and section 75. In its final response it said that no breach of contract had been demonstrated and that it was unable to progress the claim.

Mr M remained unhappy and brought his complaint to this service.

Our investigator didn't uphold the complaint. He said there wasn't a relevant chargeback reason for the circumstances of Mr M's complaint, and that Virgin Money hadn't treated Mr M unfairly by not raising a chargeback. In relation to section 75, the investigator said he thought that Virgin Money had fairly concluded that there had been no breach of contract, because there was a term in the agreement between Mr M and E which gave E authority to charge a £55 fee when dealing with offences sent to E whilst cars were on hire.

Mr M didn't agree so I've been asked to review the complaint.

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.

Chargeback

When dealing with chargebacks, banks and providers of credit need to do so within the remit of the rules set by the relevant card scheme.

Chargebacks are a voluntary scheme. How it works is that the card issuer checks the complaint against the possible chargeback reasons to see what evidence is required. This is so it can decide whether it can make a successful claim for the customer. Card issuers don't have to submit claims and will only do so if they have evidence which will support a chargeback claim. This service expects card issuers to help if they can, but we don't expect them to raise a chargeback if there is little prospect of success.

I've looked at the Mastercard scheme chargeback rules which are applicable to Mr M's Virgin Money account. I can't see that any of the possible chargeback reasons are relevant to the circumstances of Mr M's complaint. Because of this, I don't think Virgin Money made an error or acted unfairly by not raising a chargeback.

Section 75

In certain circumstances, section 75 gives a consumer a right to claim against a supplier of goods or a provider of credit if there's been a breach of contract or a misrepresentation.

In order to uphold Mr M's complaint against Virgin Money, I would need to be satisfied that there's been a breach of contract or a misrepresentation and that Virgin Money's response to the claim under section 75 wasn't fair or reasonable.

Mr M hasn't said that there's been a misrepresentation, so I've focussed on whether there's been a breach of contract.

In this case, Mr M says that E had no contractual right to charge him the £55 fee because he didn't incur a fine.

I've looked at the agreement that Mr M entered into with E. the agreement includes the following term, which is relevant to Mr M's complaint:

"Traffic and parking fines: If the vehicle receives a fine during the rental period, you will be responsible for full payment of the fine as well as a £55 traffic fine management fee per fine. This includes, but is not limited to, parking offences, speeding fines, congestion charges, bus lane offences, traffic signal offences, toll road offences, private company fines etc..."

It's not disputed that Mr M committed four separate speeding offences whilst he was driving the car he'd hired from E. Notification of the offences was sent to E as the registered owner of the car.

Mr M says that because he wasn't prosecuted and didn't receive a fine, the terms in the agreement with E can't be enforced against him and the charges of £55 per offence shouldn't have been applied.

I've seen a letter provided by Mr M which suggests that the prosecutor has decided to take no further action as at 3 March 2023, but that the prosecutor reserves the right to prosecute the case against Mr M at a future date. However, this doesn't change the fact that E received four notices of intended prosecution and that E had to undertake administrative tasks in relation to these, including (for instance) complying with its obligation to identify the driver.

When Mr M signed the car rental agreement with E, he agreed to pay any traffic fines plus the administrative fees that E charges to deal with a fine. The purpose of the term in the contract is to cover the administrative costs incurred by E if a driver commits a traffic offence whilst driving the rental vehicle. I'm satisfied that the clause covers circumstances where a speeding offence has been committed, and that E applied the charges in accordance with the terms and conditions of the agreement.

Taking everything into consideration, I'm not persuaded that there's enough evidence to show that a breach of contract has occurred. Therefore, I don't think that Virgin Money acted unfairly or unreasonably when it declined to take the section 75 claim any further. For these reasons, I'm unable to uphold the complaint.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 January 2024.

Emma Davy
Ombudsman