

The complaint

Mr P complains about the outcome of a claim he made to Clydesdale Bank Plc trading as Virgin Money ('CB') in respect of a purchase he made using his credit card.

What happened

Mr P paid for a May 2020 golfing holiday for a group of people using his CB credit card. He paid for the deposit of £100 using the card and the later balance payment of £2,852 by bank transfer.

Due to the pandemic the holiday wasn't able to go ahead but Mr P was not able to get a refund from the supplier he booked with. So he approached CB for help. It was able to get £100 back for him but said that it would not pay him the rest under Section 75 of the Consumer Credit Act 1974 because the supplier he paid was acting as an agent and did not provide the travel services that were cancelled.

Our investigator looked into the case and said what the supplier sold Mr P was a 'package holiday' as defined by the Package Travel and Linked Travel Arrangements Regulations 2018 (PTRs). As a result he considered the supplier was liable to refund Mr P and had breached its contract with him by not doing so. With this in mind he considered that CB should have upheld his Section 75 claim and refunded him the £2,852.

CB did not respond so the matter has come to me for decision.

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.

In his initial complaint form Mr P mentioned some small compensation CB paid him for what appears to be customer service issues. This does not appear to be in dispute and the customer service issues do not appear to form part of his complaint to this service so I am not covering these here.

I am not going to go into detailed discussion regarding chargeback either as it appears that CB has recovered and refunded Mr P the £100 paid on the card through these means. It isn't possible to recover more than what was paid on the card through chargeback so I move on to consider Section 75 which deals with broader claims for loss.

Section 75 can allow Mr P to hold CB responsible for any claim against the supplier he has for breach of contract or misrepresentation. However, for Section 75 to apply certain criteria need to be satisfied. After considering said criteria I consider they are in place – however, I will deal with CB's objection.

CB has indicated there is no valid 'debtor-creditor-supplier' agreement for a valid claim because Mr P bought the holiday through an agent which doesn't directly supply the hotel and other services. However, here there is a valid claim in respect of the actions of the entity

paid using the credit card.

In this case although the entity paid using the credit card does not directly provide the travel services it has its own contractual liabilities. And in this case there are specific contractual liabilities which are implied by the PTRs because the supplier provided Mr P with a package holiday as defined by these regulations.

I consider that the supplier offered for sale and sold Mr P a package travel contract as defined by the PTRs because it combined and sold at an inclusive price a holiday consisting of at least two different types of travel services.

In this case I have looked at the booking confirmation and supporting evidence and consider that the travel services here consist of accommodation (the hotel) and tourist services (rounds of golf).

Here I consider the supplier which Mr P paid is the 'organiser' (under the PTRs) which has combined and sold the package. Said organiser has particular obligations to Mr P as implied into the contract for sale by the PTRs.

One of those terms implied into the contract which is particularly relevant here is set out in section 13 of the PTRs. In summary, it means that where the supplier is prevented from performing the contract because of unavoidable and extraordinary circumstances it may terminate the package travel contract but will also provide Mr P a full refund of the payments he made for the package (but it is not liable for additional compensation).

Here the supplier cancelled the package due to the global pandemic. So I consider the requirements to trigger a refund under the term implied by section 13 are satisfied. And as the supplier has not refunded Mr P it is in breach of said implied term.

Putting things right

Because there is a breach of contract here which CB is liable for via Section 75, I consider it fair and reasonable it remedies said breach by refunding Mr P the rest of the booking amount. I also consider it fair in these particular circumstances that CB pay Mr P 8% simple yearly out of pocket interest from the date he paid the balance to the date of settlement.

Also for the sake of completeness I consider that Mr P as lead booker and paying party is able to recover monies on behalf of the whole group.

My final decision

Clydesdale Bank Plc trading as Virgin Money should pay Mr P £2,852 plus 8% simple yearly interest from the date of payment to the date of settlement.

If CB consider it necessary to deduct tax from the interest award it should provide Mr P with a certificate of tax deduction so he may claim a refund from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 24 November 2022.

Mark Lancod
Ombudsman