

## The complaint

Mr H complains about the way Clydesdale Bank Plc trading as Virgin Money ('Virgin Money') handled a claim he made about a purchase on his credit card.

## What happened

Mr H purchased a package holiday for him and one other (who I will refer to as Mrs H) priced at £5,158 from a holiday booking agent ('the supplier') including flights and a cruise using his Virgin Money credit card.

Mr H and Mrs H flew out in advance of the cruise departure – but Mr H says that shortly before the ship was due to leave they learnt the supplier made changes to the original cruise itinerary. As a result they did not board the cruise and Mr H requested a refund for the cost of the holiday except flights. Mr H also requested the extra money he spent amending the flights home.

The supplier refunded Mr H a portion of the amount he requested – but not everything. So he approached Virgin Money for help. It considered the matter under Section 75 of the Consumer Credit Act 1974 ('Section 75') – but it refused to refund Mr H on the basis that there was no breach of contract by the supplier. However, it did credit him with £75 compensation for customer service delays.

Our investigator considered how Virgin Money had handled the claim and upheld the complaint. He noted that Mr H was entitled to a refund under the terms implied by the Package Travel and Linked Travel Arrangements Regulations 2018 ('PTRs') and that a failure to provide this was a breach of contract. He said that Virgin Money should refund Mr H the remaining amount he is claiming for the cost of the package including additional compensation to reflect the extra money he spent on alternative flights home.

Virgin Money did not respond so the matter has come to me for a decision.

I issued a provisional decision on this case. In this I said:

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

*Section 75 allows Mr H to hold Virgin Money responsible for breach of contract or misrepresentation by the supplier in respect of goods or service purchased using the credit afforded here. There are certain technical criteria that have to be met for a Section 75 claim to be valid. These relate to the cost of the goods or services, the parties to the transaction, or the way the payment was made.*

*I am satisfied the criteria is in place in order for Section 75 to apply to the agreement between Mr H and the booking agent he paid for the holiday ('the supplier'). So, given Mr H's issue, for me to find that a refund of any kind is due to him I would need to be satisfied there has been a breach of contract or misrepresentation by said supplier.*

*For the sake of completeness, despite the booking being for more than one person I am satisfied that as the lead booker and person paying for the booking Mr H is entitled to make a potential claim against Virgin Money in relation to its total cost.*

*In determining the supplier's potential liability I do not appear to have been provided the exact terms and conditions from the time of booking. However, in the absence of these I have looked at archived and current terms in considering the likely contractual provisions that relate to this booking alongside the relevant law, particularly the PTRs.*

*For the PTRs to apply to a particular holiday booking certain criterion has to be met. I am satisfied this is the case here. Notably Mr H's booking is a combination of passenger transport (flights and cruise ship transport in this case) and the provision of overnight accommodation combined and sold at an inclusive or total price meeting the requirements for the PTRs to apply to the travel contract.*

*The PTR's place liability for the performance of a package travel contract on the organiser of said package (the supplier here) and imply certain terms into the contract. Mr H and our investigator have mentioned Regulation 11 and 12 of the PTRs being particularly relevant. However, I am not persuaded they are in this instance. I say this because these sections appear to relate to changes and cancellation before the package commences. In this case, when Mr H refused to accept the changes the supplier proposed Mr H and Mrs H had taken the initial flights which form part of the overall package holiday booking – so the package had already commenced.*

*I consider the relevant sections of the PTRs in this instance to be Regulation 15 and 16. In this case Regulation 15 implies a term into Mr H's contract with the supplier that it is liable for the performance the travel services included in the package travel contract and if it is unable to perform a significant proportion of travel services in accordance with the agreed package it must provide a suitable alternative at no further cost. If the alternative results in a package of lower quality than originally agreed the organiser must grant an appropriate price reduction.*

*In this case I am satisfied that as a result of port restrictions the supplier was unable to perform significant parts of the agreed package and considered it had to offer an alternative arrangement. It appears that as part of this alternative the itinerary was amended so that one of the stops was changed to an 'at sea' day and the ultimate final destination of the cruise was removed and the boat was directed back to its original departure point instead. In addition to this the supplier offered a 10% price reduction to make up for what was an apparent downgrade in the original package.*

*I can see that Mr H wrote to the supplier to reject this proposal when he found out about it. I am satisfied that under Regulation 15 Mr H was able to reject the alternative arrangements on the basis they were not directly comparable to what was originally agreed in the package travel contract (Mr H also indicates that the price reduction was not adequate – which I think is also arguable).*

*As a result of Mr H rejecting the proposed alternative arrangements I am satisfied that under the implied terms via Regulations 15 and 16 of the PTRs he is entitled to an appropriate price reduction. In this particular case I can see that Mr H and Mrs H decided not to continue with the cruise as a result of rejecting the proposed alternative arrangements. I don't think this was unreasonable considering the significant changes to the original package. So I think the cost of the cruise should fairly form part of the price reduction here.*

*Mr H says he is not claiming the cost of the outgoing flights as he has accepted that his party benefited from these. I note they arrived at the destination about two weeks before the cruise was due to leave and Mr H said they used this time to visit family.*

*The cost of the return flights forming part of the price reduction is something I have thought about too as Mr H has arguably received some benefit from these as a means of returning from a trip where he spent two weeks before the cruise took place. However, I note that the sole purpose of the trip was not just to see family for two weeks– it was also to take a cruise. And had the trip not involved a cruise the cost of said flights or the arrangements Mr H made might have been quite different. I also note what Mr H has said about not claiming the outgoing flights in recognition of the degree of benefit received from the air transport provided in the package. So currently I am minded to say it is fair and reasonable the return flights form part of an appropriate price reduction but not the outgoing flights.*

*I don't appear to have a breakdown of what the outgoing flights cost as part of the package; however Mr H says this is £1,138 and in the absence of any other information to the contrary this does not seem unrealistic or unfair. So all things considered it appears that under the PTRs Mr H is entitled to an appropriate price reduction of the balance of his booking being £4,020 . Mr H has also said he already received back £1,438 from the supplier too – so this should be deducted from any price reduction he is due leaving Virgin Money with £2,582 to refund. I think it also fair that it pays him 8% simple yearly interest on this from the date it declined the claim to the date of settlement.*

*Mr H has also claimed £370 consequential costs as a result of the supplier's actions as he had to change the times of the return flights. However, unlike our investigator I don't think he is able to claim these costs against Virgin Money in this situation. I say this because the supplier has pointed to the itinerary being changed due to port closures arising out of the Covid-19 pandemic. I believe this would likely constitute 'unavoidable and extraordinary circumstances' as set out in the PTRs - and in this situation under the terms implied by Regulation 15 and 16 Mr H is unable to claim additional compensation for damages.*

*It is worth noting here that the position regarding additional compensation is likely to be the same here even if I were to accept that the terms implied by Regulation 11 or 12 of the PTRs applied instead. I also note that nothing in the supplier's express terms and conditions would satisfy me that Mr H is contractually entitled to additional compensation in this situation – the terms I have seen appear to expressly indicate that Mr H wouldn't be.*

*I note that Virgin Money says it paid Mr H £75 compensation for delays in responding to him. Mr H has not indicated he thinks this is unfair and it doesn't appear to form part of his ongoing complaint so I have not considered it in great detail here. On the face of it this seems like a fair thing for Virgin Money to have done. I am writing this on the basis that Virgin Money has paid this compensation already –but if it hasn't done then it should.*

Mr H responded to my decision. He clarified that the outgoing flights did not cost £1,138 and in fact the round-trip flights cost £1,158 in total (and provided evidence to support this). He also said, in summary:

- the cruise operator agreed to refund the £370 cost of amending the return flights showing it accepts liability for this
- he raised his claim in May 2020 and it took until April 2021 for Virgin Money to give him a final answer

Virgin Money did not respond.

In light of the information Mr H had provided I wrote to both parties with a rationale and proposal to:

- factor in 40% of the £1,158 cost of flights as part of a fair price reduction
- increase the compensation for distress and inconvenience to £150

Neither party added any further comments on this.

### **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 party has added anything that makes me think the substantive findings in my provisional decision (as copied above) should change. I still consider these fair and reasonable for the reasons given.

Mr H raised some things in response to my provisional findings which caused me to propose an alteration to the redress. I have dealt with the rationale for this in my recent correspondence to both parties but will repeat it here as it now forms part of my final decision.

I originally understood that Mr H was claiming the cost of the return flights as part of the remaining balance of the cost of the package. However, it appears this is not the case. Mr H has clarified that the £1,158 he did not originally request as a refund was for the round-trip flights in the package he booked - not just the outgoing leg. He has sent an email from the supplier to confirm this breakdown of costings which appears credible.

This indicates that Mr H considers he has benefited from the round-trip flights more than I originally appreciated. However, I also still think what I have said in my provisional findings about the return flights is broadly fair, in that although he has benefited from the flights in using these to see family abroad, the purpose of said flights was also to get to and from the cruise. Had the cruise not been a factor here he might not have had the same costs in respect of these flights. And I think overall it is difficult to agree he had the full benefit of the flights he paid for as part of the package which did not go ahead as originally planned.

Deciding what Mr H should pay for the flights is not a scientific calculation here. I think that going out to see his family is not a minor benefit from what he has indicated. So I think it fair he pays for the outbound flights and a bit towards the return flights, but that also some money is refunded to reflect that he has ultimately not fully benefited from the package he booked – the flights of which form part of this. I propose that 40% of the £1,158 cost of the flights should be part of the fair price reduction to be refunded to Mr H for the package including interest.

Mr H has pointed out the cruise operator at one stage agreed to refund the £370 cost of amending the return flights and he has said this shows there is acceptance of liability for these costs. However, I don't think this changes the strict contractual position with the supplier as detailed in my provisional decision. Ultimately, in not refunding these costs there is no breach of contract by it either under the terms of its own contract or those implied by the PTRs. So I will not be directing Clydesdale to pay these.

Mr H has also pointed out that he raised his claim in May 2020 and had a final answer in April 2021. However, I note the initial outcome to the claim was given in November 2020. This was still not ideal – but in the favour of Clydesdale I also factor in the challenges around

Covid-19 at the time and the sort of delays they were causing. I certainly think overall things could have been better here regarding response times and £75 does seem to be on the low side now that Mr H has commented. I therefore consider it fair to award an additional £50 compensation for distress and inconvenience to reflect the overall delays in handling matters.

### **Putting things right**

Mr H should get a partial refund of the £5,158 package holiday cost which breaks down as follows:

£5,158 with deductions as follows:

- £1,438 received back from the supplier already
- £695 representing 60% of the cost of the round-trip flights to reflect partial benefit received

Total: £3,025 to be refunded

He should also get £125 compensation - £75 of which I understand has been paid to him already – but if it hasn't it should be.

### **My final decision**

I uphold this complaint and direct Clydesdale Bank Plc trading as Virgin Money to pay Mr H £3,025 plus simple yearly 8% interest from the date it rejected his Section 75 claim to the date of settlement. If it has not already done so it should also pay him the £75 compensation for the customer service issues it identified plus an extra £50.

If Virgin Money considers it necessary to deduct tax from my interest award it should provide Mr H 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 H to accept or reject my decision before 10 February 2023.

Mark Lancod  
**Ombudsman**