

The complaint

Ms B complains that Clydesdale Bank Plc (trading as Virgin Money) declined her claim for compensation under section 75 of the Consumer Credit Act 1974 in relation to her purchase of a package holiday.

What happened

In September 2021 Ms B paid £5,660 for a package holiday to the Maldives for herself and her son. This included flights and ten days' accommodation. She paid for almost all of that amount with two Virgin Money credit card payments. She went on the holiday in October 2021.

In November of that year, Ms B complained to Virgin Money about various deficiencies in her hotel accommodation and other services in connection with the package holiday. She said the resort was still under construction, most of the restaurants and bars were still closed, the pool was closed, most of the promised activities were not available for her son, the air conditioning was broken, the tap water was not clean, and no effort had been made to fumigate the island to get rid of the mosquitos, nor were there any anti-mosquito products for sale on the island. She said she had been to the Maldives before and had not experienced mosquitos then. She asked for a refund, and also for some consequential losses.

Virgin Money did not agree to refund Ms B. In July 2022 it sent her its final response. It said that the hotel manager had offered to move her to another villa, which she had declined. Virgin Money said this had been a reasonable solution. It said that towards the end of her holiday, the package holiday organiser had arranged to move her to another island, which she had accepted, after which she had made no more complaints. The organiser had also paid her £500 as a gesture of good will. Virgin Money thought that this response had been enough to put things right. It added that mosquitos are to be expected in a tropical environment and are outside the control of the service provider.

Being dissatisfied with that response, Ms B brought this complaint to our service. She also complained about how long Virgin Money had taken to deal with her claim.

Our investigator upheld most of Ms B's complaint. As there was undisputed evidence that there was still ongoing construction work at the resort (including photos, videos, the £500 refund, and online reviews left at the time), she accepted that the holiday had not been as promised in the sales literature, which had advertised a luxury resort. She thought it was plausible that most of the restaurants had been closed. She did not uphold the other complaint points. She recommended that Virgin Money refund 20% of the price Ms B had paid for the holiday, minus £500, which came to £632. She also agreed that Virgin Money had taken too long to deal with Ms B's claim, and recommended that it pay her £150, instead of the £50 it had offered her, making £780 altogether.

Ms B did not think that was enough compensation for a luxury holiday that had fallen far short. She asked for an ombudsman's decision. I wrote a provisional decision which read as follows.

What I've provisionally 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.

Section 75 of the Consumer Credit Act makes Virgin Money responsible for any breach of contract or misrepresentation by the organiser of Ms B's package holiday. Regulations 15 and 16 of the Package Travel and Linked Travel Arrangements Regulations 2018 imply terms into a package travel contract which make the organiser liable for the holiday accommodation. It is not in dispute that section 75 and the regulations apply to Ms B's purchase so as to make Virgin Money responsible for a breach of contract arising from the state of her accommodation on her holiday, even though her credit card payments were not made directly to the hotel.

Having reviewed all of the evidence in this case, I am minded to uphold this complaint in part. I agree with the investigator about which complaint points should be upheld, and which not (with one small exception: I don't think it's good enough that anti-mosquito products were not available to buy anywhere on the original island). As well as the evidence the investigator referred to in her opinion, I have also found the resort management's response to an online review in which it confirmed that construction work had still been ongoing at the time of Ms B's visit, and that some of the amenities were not yet available. And Virgin Money's own case notes mention an email from the resort manager confirming that the resort was not fully operational.

I don't think Ms B's decision not to move to a new villa should be held against her, since that would not have solved her problems. That villa was still in the same resort, so there would still have been a lack of a pool, bars, restaurants and so on. These problems were not solved until she was moved to a new island, but that was near the end of the holiday, so for the majority of the time she had to endure a significantly sub-standard holiday.

I don't think that all of this means there should be a full refund. The holiday was not cancelled; Ms B and her son were still in the Maldives, and there were still some facilities. The pool may have been closed, but they were on an island so they could have gone to the beach and swum in the sea; some of the restaurants and bars were still open; there was a spa; the air conditioning was repaired. Some alternative activities were arranged for her son.

But I do not think that the 20% refund the investigator recommended was enough to reflect how disappointing the experience must have been. This was an expensive resort, advertised as having a high standard of quality, with lots to do. I'm satisfied that Ms B's experience fell well short of that.

Having regard to everything, including Ms B's transfer to another island late in the day, I currently think that a refund of 35% – minus the £500 already paid – would be fairer compensation. To that I will add the £150 which was recommended by the investigator for the delays in handling Ms B's claim. That all comes to £1,631.

I do not think the costs described as consequential losses arose from the breach of contract or from any misrepresentations, and therefore I will not hold Virgin Money liable for them.

So my provisional decision is that I intend to uphold this complaint. Subject to any further representations I receive from the parties... I intend to order Clydesdale Bank Plc (trading as Virgin Money) to pay Ms B £1,631.

Responses to my provisional decision

Ms B accepted my provisional decision. Clydesdale did not reply to it. So there is no reason for me to depart from my provisional findings, and I confirm them here.

My final decision

My decision is that I uphold this complaint. I order Clydesdale Bank Plc (trading as Virgin Money) to pay Ms B £1,631.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 2 June 2023.

Richard Wood
Ombudsman