

The complaint

Mr S complains that Clydesdale Bank Plc, trading as Virgin Money, declined his claim under section 75 of the Consumer Credit Act 1974 for compensation for a package holiday on a cruise ship. He also complains that his address was reported incorrectly to a credit reference agency.

What happened

In May 2022 Mr S opened a credit card account with Virgin Money. He lives in a house, but his address was wrongly reported to a credit reference agency as a flat.

In June 2022 Mr S bought a two-week holiday on a cruise ship for his family and paid £5,450 for it with his Virgin Money credit card. The holiday was not satisfactory. He complained about various issues, including:

- Incompetent service at check-in, which resulted in hours of time wasted. He says he asked to cancel the holiday and leave the ship before disembarkation in exchange for a refund, but when this was not agreed to he persisted with the trip.
- Five of the meals were of poor quality, including pink chicken, and two meals were not provided at all.
- Staff were unable to provide accurate details about scheduled meal times, and sometimes conflicting times were given.
- Covid-19 measures were not adhered to.
- All drinks up to £13 were supposed to be included in the package at no extra charge, but he was charged separately for some of them.
- Some other services that were supposed to be included were also charged separately, such as the spa.
- The cabin was dirty.
- Lifeguards left the swimming pools unattended.
- Children were using the adults-only pool.
- Teenagers were fighting in the corridors on one floor.
- There was no or limited wi-fi, and the cruise provider's mobile phone app didn't work properly or at all.
- The cleaners' vacuum cleaners had damaged electrical cords which had been patched up with insulation tape, and this presented a risk of electrocution to children.
- Some vomit Mr S found on the floor outside his cabin was not cleaned up promptly.

Mr S raised these matters with staff on four occasions, but nothing meaningful was done, except that he was given some apology cards. On returning home, he complained to the cruise provider, but received no response. He then asked Virgin Money to refund him under section 75, alleging that the above matters amounted to breaches of contract or misrepresentations by the provider.

Virgin Money did not uphold his claim. It said that the cruise had been provided, and that meant there had not been a breach of contract. It did not agree that it was responsible for adding the word "flat" to the address on Mr S's credit file.

Being dissatisfied with that response, Mr S brought this complaint to our service, but our investigator did not uphold it. He did not think there had been a breach of contract or misrepresentation by the cruise provider. In particular, he noted that the terms and conditions about drinks being included stated that this would not apply in all bars, and some drinks would only qualify for a 25% discount. He thought that the mobile phone app was not part of the package holiday. He added that a chargeback dispute would not have succeeded, for the same reasons. The investigator also said he had seen evidence that when Mr S had applied for his credit card account, he had inadvertently entered his house number in the field for flat numbers.

Mr S asked for an ombudsman to review his case. I wrote a provisional decision which read as follows.

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.

Having done so, I am currently minded to uphold some of this complaint.

The section 75 claim

I have seen the complaint email which Mr S sent to the cruise provider detailing everything that went wrong with the cruise. A copy of that email was sent to our investigator by Virgin Money, and so I infer that Mr S must have also sent that same description to Virgin Money when he raised his section 75 claim. But Virgin Money's response to his claim simply says that because the cruise had been provided and Mr S had been on it, this meant that the contract had been fulfilled and there had been no breach.

I cannot accept that this was the right approach. A contract to provide a package holiday can of course be breached by failing to provide it at all, but that is certainly not the only way it can be breached. It can also be breached by failing to provide the service with reasonable care and skill, which is a statutory implied term under section 49 of the Consumer Rights Act 2015.¹ And it can be breached by failing to comply with an express term of the contract, such as failing to provide a meal when it was a term that three meals would be provided each day, for example.

Virgin Money's final response to Mr S's complaint about the outcome of his claim was little better. It repeated what it had told him when it had denied his claim, and then added that some drinks may still be chargeable depending on circumstances; also the evidence Mr S had provided did not make it clear which drinks he had purchased.

I agree with Virgin Money about the drinks. The terms and conditions about the premium drinks package (see page 18 of the ticket) say that there are exceptions. Some venues are not included, and the minibar is not included, regardless of price. Also the deal is only valid for one drink per order, so extra drinks would still be charged. The evidence Mr S has provided is not enough for me to decide that these exceptions did not apply to the drinks he paid for, so I think that Virgin Money cannot be faulted for rejecting this part of his claim. And I currently think that similar problems also face Mr S's claim about other services he was charged for.

¹ There are further implied terms under Part 4 of the Package Travel and Linked Travel Arrangements Regulations 2018, and I have had regard to these too.

But there is nothing in either of Virgin Money's letters, or in anything else it has provided our service with, to show that Virgin Money considered the other issues Mr S raised, which I've listed above. Some of these issues are clearly not the holiday provider's fault, such as the behaviour of children on the cruise, and so they would not be capable of amounting to a breach of contract. And a couple of issues are, I think, too trivial to qualify, such as vacuum cleaner power lines repaired with insulation tape. But some other issues (if I accept that they happened) are clear breaches of contract, such as the meals that were not provided or which were of a poor standard, the lack of wi-fi (the advertising had promised "the fastest internet at sea"), and the dirty cabin. Nothing I've seen persuades me that Virgin Money considered these issues properly or at all.

I find that Mr S's account of what happened is credible. Virgin Money was not obliged to take his word for everything, of course; it could reasonably ask him for evidence and then reject a claim about anything that was unsubstantiated. But since Virgin Money didn't do that, I am not going to adopt an excessively sceptical approach to Mr S's evidence now. So my starting point will be to accept as true what Mr S said in his complaint email, except where there is a good reason to doubt him. (This does not apply to the premium drinks package, because I'm satisfied that Virgin Money did consider that issue properly and reached a justifiable conclusion about it.)

I therefore accept that there were problems with wi-fi access, negligent lifeguards at the pools, poor quality food and on two occasions no food, incompetent and disorganised service at check-in, inconsistent information was given about meal times, the app didn't work properly, the cabin was dirty, and the cleaners failed to clean up the vomit promptly. I think that some (but not all) of these issues mean that Mr S was entitled to a price reduction, and that Virgin Money is liable for that under section 75.

I am not minded to award compensation for all of these issues. I'm afraid that one of those is the vomit. I appreciate that finding vomit on the floor would not have been pleasant, but a cruise ship is very big and has lots of people, and so realistically it won't always be possible for the cleaning staff, however diligent, to get to everything within the timescale that a customer might normally be able to expect elsewhere. Rather than being a breach of contract, I think that it is just one of those things.

Mr S has provided photos showing that there was dust around the ceiling vent in his cabin. That does suggest to me that the cabins were not being cleaned as thoroughly as they should, but on the other hand, if other parts of the cabin had been dirty then I think he would have photographed those too. So I think that the cabin was probably not dirty all over.

I think that the other issues which I have found proved deserve some compensation. I am not going to consider them all separately and come up with a sum of money for each of them. Rather, I will consider them all together and reach a figure that reflects everything that happened in the round. I think that the most serious ones are the lack of internet (I've seen Mr S's screenshots confirming this), the chaotic start to the holiday at check-in, and the problems with the food. To put the last point in perspective, that was seven meals out of 42 (three meals a day for 14 days), or one meal in six.

Balanced against all of that, Mr S and his family still went on a cruise together, so I have to take that into account to make sure that the total refund for what went wrong is proportionate.

I currently think that a refund of £1,200 would be a fair resolution to this case.

The address reported to the credit reference agency

Virgin Money has provided evidence from its systems showing that when Mr S applied for his credit card account, he entered his house number in the box for flat numbers by mistake. That adequately explains why his address showed up as a flat on his credit file, and it was not Virgin Money's fault, so I don't uphold his complaint about that point. I understand that the record has now been corrected.

So my provisional decision is that I intend to uphold this complaint. Subject to any further representations I receive from the parties by the date below, I intend to order Clydesdale Bank Plc, trading as Virgin Money, to pay Mr S £1,200.

Responses to my provisional decision

Virgin Money accepted my provisional decision and agreed to pay Mr S £1,200.

Mr S said that the cruise provider recently agreed to refund him £37.20 for the drinks. I'm pleased to hear that. I recommend that he obtains that refund from the cruise provider; it won't affect what Virgin Money has to pay him, and I think it is fair that that refund should be paid by the party actually responsible rather than by his credit card provider.

There is therefore 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 Mr S £1,200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 September 2023.

Richard Wood
Ombudsman