

The complaint

Mr H is unhappy with how Clydesdale Bank Plc trading as Virgin Money ("Virgin Money") handled a quality of service claim he made to them.

What happened

Mr H booked flights for his family via a travel agent I shall call "D" in June 2022 to the sum of £1243.98 for two outbound and two return flights.

The flights were scheduled during February 2023 and as Mr H was travelling with his partner and a baby under the age of two, he required a bassinet for each of the flights. He says he was told by D that the flights included this, but upon arrival at the airport, was informed by the airline that the bassinet hadn't been booked. He therefore didn't have access to this for each of his flights and the child sat in Mr H and his partner's laps for the duration.

Mr H says he then emailed D the following month to complain but didn't receive a response. He then contacted his credit card provider Virgin Money on 27 March 2023 about what'd happened so that they could raise a chargeback claim, and a Section 75 (S75) claim under the Consumer Credit Act 1974.

Virgin Money told Mr H that he'd receive an answer by 18 May 2023. He subsequently spoke to Virgin Money who said that further documents would be required for a successful chargeback. He says they assured him the chargeback would be processed as soon as these were received.

Mr H didn't hear anything further and so chased Virgin Money in June 2023. He then received a letter from Virgin Money in the same month saying that they'd declined both the chargeback and S75 claim. They said both claims had been unsuccessful as the service had been used and they didn't believe there had been any breach of contract regarding its provision. Virgin Money did however credit Mr H's credit card for £125 in July 2023 and then again £100 in August 2023 as they didn't respond to the claim within the time frames expected.

Mr H didn't agree with Virgin Money's claim outcome and therefore the complaint was referred to our service in September 2023.

Our investigator looked at the complaint and said that there was insufficient evidence that the baby bassinet had been promised by D prior to booking, nor that its provision was stated in the booking terms and conditions. They therefore didn't believe a refund was due to Mr H.

They also said they were aware that the front row seats were required for the bassinets but these may have come at a higher cost. They felt that as the normal seats had been booked and utilised, there hadn't been a monetary loss so there was nothing further due.

Mr H didn't agree with the investigator's view and so his complaint has been passed to me for review and decision.

Last month I issued a provisional decision. In summary I said:

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

I've read and considered the evidence submitted by the parties but won't comment on it all – only the matters I consider to be central to this complaint. This isn't intended as a discourtesy but reflects my role in resolving disputes informally.

It's important to note that Virgin Money aren't the provider of the goods here – so in deciding what is fair and reasonable, I'm looking at their particular role as a provider of financial services. In doing so I note that because Mr H paid for the flights using his credit card, both a chargeback and a S75 claim could possibly help him. So in deciding what is fair and reasonable I've focussed on this.

Chargeback

There is no requirement for Virgin Money to raise a chargeback, but it's often good practice to do so. However, a chargeback isn't guaranteed to succeed and is governed by the limitations of the particular card scheme rules (in this case Mastercard). I've considered the relevant chargeback rules in deciding whether Virgin Money acted fairly.

I note Mr H's chargeback claim would fall under 'goods/services not as described'. Virgin Money chose not to raise a claim as Mr H had travelled on his flights and they had insufficient evidence that a bassinet was guaranteed to Mr H and included in the costs. I also note that D's terms and conditions don't reference a bassinet or a guarantee of its provision.

While the claim outcome was in June 2023, Mr H has since provided correspondence from D dated 22 November 2023 where they've said that although a bassinet seat was requested, it'd depend on the airline on whether it'd be available at the time of travel.

I understand this email wasn't available at the time the chargeback claim was considered. Even with this in mind, this doesn't change the fact there is insufficient evidence of a guarantee of a bassinet on the flights. Therefore I don't think Virgin Money acted unreasonably in choosing not to raise a claim.

I also think a S75 claim for the bassinet as a consequential loss would be better suited here as Mr H did travel on his flights, and so a full recovery of what was paid wouldn't be the most appropriate recourse.

Section 75

S75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there is either a breach of contract or misrepresentation by the supplier of goods and services.

But for there to be a valid claim under S75 there are certain criteria that also need to be satisfied. One of these is that there needs to be a valid agreement between the 'debtor' who took out the finance and the supplier of goods or services in dispute.

In this case the 'debtor' is Mr H who made the booking and paid with his Virgin Money credit card. He is therefore contracting with D for their services as a travel agent to book his flights and so has the required contractual agreement with them for a S75 claim regarding misrepresentation or breach of contract.

As Mr H's payment and agreement was with the travel agent rather than the airline, it's unlikely there would be a required contractual agreement with the airline itself here for a valid S75 claim. However I understand Mr H's complaint is about the service provided by D rather than the airline.

Therefore In order to assess a valid claim, Virgin Money would've needed to consider all relevant evidence with regard to the alleged breach of contract. In this case Virgin Money said that they didn't agree there was a valid S75 claim as they had insufficient evidence a bassinet was guaranteed to Mr H by D.

I've reviewed Mr H's e-ticket issued by D and can't see any mention of the provision of a bassinet to him, although their correspondence of November 2023 says it was requested to the airline. In addition I've reviewed D's terms and conditions on their website and there isn't any reference to bassinets nor guarantees to their provision.

Mr H also provided correspondence from the airline dated 26 November 2023 which clarified that only the front row seats of Economy Class were eligible for bassinets as there is more leg room to facilitate these. They said that passengers with babies are given priority to reserve these seats and that they couldn't find a request to reserve these or a baby bassinet from D.

While I appreciate Virgin Money didn't have this evidence available when they issued their S75 claim outcome, I think it would've been reasonable to make these inquiries as a part of the claim against them for D's actions.

While D say they requested the bassinets, and the airline says they have no record of this, Mr H couldn't have got the bassinets if D hadn't requested the front seats with the further legroom to facilitate this. And I've insufficient evidence that D requested these.

S75 provides an equal right to claim against the credit provider if there is a breach of contract by the supplier of the services – so in this case D who booked these airline seats for Mr H.

While there is limited information available with regard to what was discussed between Mr H and D, Mr H said that a bassinet was guaranteed to him during his phone call with them.

However D said in their email of November 2023 that they had made a request but the availability would depend on the airline.

Therefore the prospect of success under the S75 claim here would depend on whether there has been a breach of contract between Mr H and D on what was agreed.

Breach of contract

Section 50 (S50) of the Consumer Rights Act 2015 (CRA) says that:

(1) Every contract to supply a service is to be treated as including as a term of the contract

anything that is said or written to the consumer, by or on behalf of the trader, about the trader or the service, if –

(a) It is taken into account by the consumer when deciding to enter into the contract, or

(b) It is taken into account by the consumer when making any decision about the service after entering into the contract

With this in mind, it's clear the provision of a bassinet was discussed with Mr H by D, as D later confirmed that the request was made to the airline. I've insufficient evidence that the bassinet was guaranteed here though as it would ordinarily depend on their availability.

However in determining if there was a breach of contract based on the conversation between Mr H and D, I've considered whether D requested the bassinet with the required skill and care as stated under Section 49 (S49) of the CRA as follows:

Service to be performed with reasonable care and skill

(1) Every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill

The airline's correspondence of November 2023 says that only the front row seats of their Economy Class can facilitate the bassinet seats. As D confirmed they requested the bassinets as Mr H required, this would mean that they should've also booked the front row seats that could facilitate this.

However I've insufficient evidence that the necessary seats were booked to comply with Mr H's request for a bassinet.

I also consider it likely that Mr H was induced into taking this booking with D as the provision of a bassinet was very important to him. While this wasn't guaranteed as it was reliant on availability, Mr H would've still required the request to be made appropriately. A part of this would've been that the required seats be requested by D when making the booking. The airline has said they didn't have a request to reserve these particular seats so I've insufficient evidence that D acted with reasonable skill and care.

As there was a requirement of D to make appropriate arrangements for the bassinet for Mr H, this was therefore a term of the contract under S50. In addition there hasn't been reasonable skill and care taken as required under S49, as on balance it doesn't look like the necessary seats were booked. I therefore consider there has been a breach of contract here.

I'm also aware that there may have been a difference in the price for the front row seats but this should've been communicated to Mr H by D and comprised a part of the booking price for the extra leg room and in turn possibility of the bassinet.

With this in mind I don't think Virgin Money has handled Mr H's S75 claim fairly. I do think further investigation should've occurred as a part of the claim to determine if an appropriate request had occurred. To address this, I think there should be a partial refund of the seats booked, as there wasn't an appropriate level of care and skill applied here in ensuring the correct seats were requested to allow the provision of a bassinet.

The cost of the flights were £1243.98 which was the total for two seats and the carriage of a child under two. The individual seat prices haven't been available but it would be reasonable

to consider the total combined cost of each seat for the four flights to then be £621.99 with the child travelling for free.

Mr H did travel, but with the child in his or his partner's lap and without the bassinet whose provision would've afforded far more comfort. And so to consider that the correct seats weren't booked to allow for these bassinets, I think half of his own seat's cost should be refunded – which would be rounded to £310. This would then compensate for the loss of the bassinet due to what'd happened and the impact on Mr H's trip as a result.

Handling of the claim

Virgin Money in their final responses of July and August 2023 offered £125 and £100 respectively as they considered Mr H hadn't received the level of service they'd expect – particularly due to the handling of the claim as well as delays in reaching a claim outcome.

Mr H initially contacted Virgin Money in March 2023 but received the claim outcome on 16 June 2023. I see the process took a few months and Virgin Money have acknowledged that things should've gone better. I do think the total combined compensation offered here is fair for the overall handling of the claim and the time taken. I therefore don't think Virgin Money need do more on this issue.

Virgin Money responded and agreed to my provisional findings to pay £310 to Mr H plus 8% interest simple per annum from the date his claim was declined to the date of settlement.

Mr H also accepted my provisional findings.

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.

As Virgin Money didn't contest my provisional findings, there are no further arguments for me to consider here. Therefore I'm upholding Mr H's complaint for the reasons explained in my provisional findings.

Putting things right

Virgin Money must now comply with my provisional findings.

My final decision

I've upheld Mr H's complaint for the reasons I've explained in my provisional decision. Clydesdale Bank Plc (trading as Virgin Money) must:

- Pay £310 to Mr H plus 8% interest simple per annum from the date his claim was declined to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 29 October 2024.

Viral Patel
Ombudsman