

The complaint

Ms W complains that Vanquis Bank Limited did not handle her claims properly in respect of an unsatisfactory holiday.

What happened

Ms W booked flights, a hotel, and a cruise with her Vanquis credit card. The payments were made separately, and she paid £1,502.89 for the flights on 17 January 2023, and for the hotel and cruise she paid a £300 deposit on 18 January 2023, and the remaining balance of £1,154.41 on 25 March 2023. In addition she paid a booking fee of £80 directly to the agent.

The flights were delayed and Ms W and her daughter missed their connecting flight, and her daughter's luggage was damaged on the outbound journey, and then both sets of luggage were lost on the return leg and took two weeks to be returned.

Ms W has explained that the hotel accommodation was not up to the standard she expected and has listed the various issues she encountered. The hotel offered her £60 which was half the cost of the extras she had paid for.

She made contact with Vanquis seeking a refund, but it was slow to respond. It decided that no refund was due as she had made use of the accommodation and flights.

Ms W brought a complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. He considered if Vanquis should have raised a chargeback and concluded there was no basis for a valid claim.

He reviewed the section 75 Consumer Credit Act 1974 ("CCA") claim addressing the flights and the hotel and cruise. He noted the flight terms and conditions and concluded that the agent did not accept responsibility for delays or lost or damaged luggage. He also noted that the agent may well have acted as an intermediary which would have rendered the claim invalid.

He sympathised with Ms W regarding the accommodation but said that there was a degree of subjectivity as to what was acceptable and he didn't think there was enough evidence to conclude there was either a breach of contract or misrepresentation.

Ms W didn't agree. She said she was sold a 5* holiday and this was not provided. The cruise accommodation was not a quiet room as she had requested and the hotel room was not properly cleaned and contained a number of broken or damaged items.

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.

I have every sympathy with Ms W, but I do not consider that I can uphold her complaint I will explain why.

There are two routes by which Ms W's claim could be pursued, the first is via chargeback and the second is by means of a section 75 claim.

As for the chargeback it may help if I explain the chargeback system. Chargeback doesn't mean there is joint liability on the card company. It is a voluntary scheme administered by the card provider, not Vanquis. The consumer makes a claim to their bank and it puts a request to the merchant's bank. But there are no guarantees the consumer's bank will be able to recover the money through chargeback, or that the merchant will accept that the claim is justified.

When a chargeback is made the scheme provider would normally want to see the invoice and/or contract and clear evidence that a chargeback is justified. A merchant is able to dispute a chargeback and I think it is clear from the correspondence it would most likely have done so. I have not seen any evidence that Vanquis considered a chargeback and I note Ms W made contact in sufficient time to allow it to do so. While a chargeback is voluntary and the bank is not obliged to make one usually I would expect it to do so. That said I do not consider it likely that a chargeback would have succeeded and so I do not consider that allows me to uphold that element of Ms W's complaint.

This second route to obtain redress was via a claim under section 75 CCA. This offers protection to customers who use certain types of credit to make purchases of goods or services. Under section 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services, if there has been a misrepresentation or breach of contract on the supplier's part.

For section 75 to apply, the law effectively says that there has to be a:

- Debtor-creditor-supplier ("D-C-S") agreement *and*
- A clear breach of contract or misrepresentation by the supplier in the chain.

Looking at the flights I am not persuaded that the D-C-S agreement is in place. Ms W is the debtor and Vanquis is the creditor. The supplier appears to be the airline and I think it likely that the agent can be said to be outside that three-way agreement which is essential to any section 75 claim.

However, as our investigator has explained he did not explore this in detail as he did not consider the claim was likely to be successful. I agree with his conclusions. To be successful under section 75 either a breach of contract or misrepresentation must be established. That means that the supplier, the agent, must have misrepresented what it was selling or failed to provide it. The flights were provided in line with the terms and conditions of the agreement. The agent accepts no responsibility for any delays and while it is regrettable that the outgoing flight was delayed I cannot see that the agent is responsible and so neither is Vanquis.

As for the damaged and lost luggage which was later returned the agent makes it clear in the agreement that it does not accept responsibility for that. The agent's role was to book the flights and this is what it did.

Turning to the accommodation I can see that there were elements which Ms W found less than perfect. It is clear that she and her daughter were disappointed, but I have to consider whether that amounted to a breach of contract. For example, Ms W asked the supplier of the cruise if a mid-deck or mid floor cabin was an option so that they had a quiet cabin. However, I have seen nothing to show that the supplier agreed to provide a quiet cabin, nor did it say anything about the quietness of its cabins. It is difficult to see that there has been

either a breach of contract or a misrepresentation.

I have noted the photos Ms W supplied which show that several parts of the room showed signs of wear and tear. I also have reviewed the list of issues Ms W raised directly with the hotel for which it offered her £60 compensation. While I can see she found this frustrating I cannot say they allow me to conclude that the hotel was either misrepresented or it failed to provide what had been offered. There is a degree of subjectivity when it comes to evaluating the quality of a hotel. As such it is difficult to establish that this hotel did not meet a 5* level.

Ms W also chose not to take the offer of a new room as there were only two days left of her stay, but it seems that the hotel did try to address her concerns and she did not take advantage of that offer. In conclusion I appreciate the disappointment experienced by Ms W, but I cannot say that Vanquis did anything wrong in its handling of her claim.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 25 December 2024.

Ivor Graham
Ombudsman