

The complaint

Mr B complains about the way in which Clydesdale Bank Plc handled his complaint when he was, he says, mis-sold airline tickets, which he paid for with his Virgin Money credit card.

What happened

In June 2023 Mr B bought return flight tickets for him and a friend through an online booking service, which I'll call "S". He booked two return tickets in economy class for £1,011. The confirmation he received from S noted that the cabin class was "Economy" and that no checked baggage was included.

Mr B's Virgin Money credit card enables him to acquire loyalty points. They can be used, amongst other things, to upgrade seats on the airline with which Mr B had made his booking. However, when he tried to do that, Mr B was told that it would not be possible. That was because the seats he had booked were "Economy Light". An upgrade would have been available if Mr B had booked seats within the other two levels of economy class.

Mr B was unable to resolve matters through the airline or S, and so referred the matter to Virgin Money. He said he had been sold economy class seats, not economy light, and so he was entitled to the benefits of economy class – including in particular the possibility of using his loyalty points to upgrade to Premium or Upper Class.

Virgin Money declined Mr B's claim. It said that it did not believe there were any grounds on which it could dispute the card payment through the chargeback process. And it did not believe either that there was any breach of contract or misrepresentation that could give rise to a claim under section 75 of the Consumer Credit Act 1974 ("section 75"). It did however pay Mr B £75 in recognition of the fact that it had not dealt with his concerns as quickly as it should have done.

Mr B referred the matter to this service. One of our investigators considered what had happened but did not recommend that the complaint be upheld. Mr B did not accept that assessment and asked that an ombudsman review the case.

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 believe I should stress at the outset that it is not for me to reach any decisions about the actions of the airline or of S. Whilst their actions are important factual background (which I must of course take into account), Mr B's complaint is about Virgin Money, and I can only consider his complaint about that business.

Mr B has provided screenshots which show the steps he had to go through to book his flights through S. I accept they show that he would have chosen the available flight times and routes, then the price and seller options, then the final details, including flight numbers, airport terminals and price. Each of the three screenshots he has provided refers to

Economy Class flights. Mr B's flight confirmation also refers to Economy Class bookings. There can in my view be no dispute that that was what he booked.

However, the airline's website shows that its Economy Class bookings are split into three different levels. They are: Economy Light, with no checked baggage; Economy Classic, with one checked bag; and Economy Delight, with a checked bag, priority boarding and extra legroom. Crucially for Mr B (and for this complaint), the latter two levels include the possibility of using loyalty points to upgrade to Premium or Upper Level, but Economy Light does not.

Mr B says that he was misled into thinking he was buying Economy Class seats, but was in fact sold something different.

Having considered what Mr B has provided and the further information from the airline's website, I am satisfied that Mr B booked and was sold Economy Class seats. What does not seem to have been made clear, however, was that there were different options available within Economy Class and that one of those options – the one sold to Mr B – could not be upgraded. I believe the booking process was silent about that.

There were two possible routes for Mr B to obtain a refund or partial refund from Virgin Money – chargeback or section 75. I'll consider each in turn:

Chargeback

Where goods or services are paid for with a debit or credit card and a dispute arises, it is often possible to resolve that dispute through the chargeback process. Chargeback is a scheme run by the card schemes (in this case, Mastercard). A card issuer (here, Virgin Money) raises a claim through the scheme against the merchant's provider of card facilities. That provider will then consider whether the claim meets the relevant criteria for chargeback (if necessary, seeking evidence from the merchant) before responding to the claim. Where necessary, the scheme provides for arbitration between the financial businesses.

Chargeback is, however, primarily a scheme for resolving disputes about payment settlements – including, for example, where payments are not authorised or are duplicated, or where goods have been paid for but not delivered. It can therefore have the effect in some cases of resolving disputes between merchants and consumers, but it is not always an appropriate or effective mechanism for achieving that aim.

There is no legal or regulatory obligation on a card issuer to pursue a chargeback claim, but this service takes the view that they should do so where there is a reasonable prospect of success.

Virgin Money did not pursue a chargeback claim in this case. It did not believe it was likely to succeed, since Mr B had been provided with what he had paid for – two Economy Class tickets. In my view, that was a reasonable conclusion to reach. It follows that Virgin Money did not act unfairly when it declined to pursue a chargeback claim.

Section 75

One effect of section 75 is that, subject to certain conditions, an individual who uses a credit card to pay for goods or services and who has a claim for breach of contract or misrepresentation against the supplier of those goods or services has a like claim against the credit card provider. The necessary relationships between Virgin Money, S and Mr B are present in this case, and the transaction falls within the relevant financial parameters. I have therefore considered Mr B's dealings with S.

I do not believe that it would be correct to say that Mr B did not receive what he paid for. He paid for S to arrange two Economy Class flights, and that is what it did. As I have indicated above, I think the booking was silent about the particular level of Economy Class Mr B booked, but it cannot properly be said that was sold different class tickets, or that he was promised something (baggage allowances, priority boarding, extra legroom, or upgrade possibilities) that he did not receive.

I can see why Mr B might take the view that this could have been made clearer when he booked and paid for the flights, but I think that is a matter between him (and other customers who might be in a similar position) and S. It's not really something I should comment on any further.

It is not for me to say whether Mr B does in fact have a claim against S – or indeed, the airline. Nor is it for me to decide whether he has a claim against Virgin Money under section 75. What I must do is decide what I consider to be a fair resolution of Mr B's complaint about Virgin Money's decision to decline his claim. In the circumstances, however, I think it was reasonable of Virgin Money to decline Mr B's claim under section 75.

My final decision

For these reasons, my final decision is that I do not uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 24 December 2024.

Mike Ingram

Ombudsman