DRN-5488598

The complaint

Mr L is unhappy with how Clydesdale Bank Plc trading as Virgin Money ("Virgin Money" handled his refund claim.

What happened

Mr L booked a few nights stay with a hotel I shall call "J" and this was paid on his Virgin Money credit card at a total cost of £484.68. However upon arrival he found that the room didn't have the blackout curtains that had been advertised in the hotel description when he booked the stay. He says this impacted his sleep significantly as it didn't prevent the neon lights outside the hotel from permeating into his room.

Mr L contacted Virgin Money on his return to raise a chargeback claim against J and a Consumer Credit Act 1974 ("CCA") section 75 claim ("S75") against Virgin Money. Virgin Money declined the chargeback claim after considering evidence submitted by Mr L as they felt the issue raised was a 'customer service' matter. With regards to the S75 claim they didn't consider there was sufficient evidence of a breach of contract or misrepresentation by J.

Virgin Money subsequently sent a final response letter to Mr L's complaint confirming they didn't think they'd done anything wrong. As Mr L remained dissatisfied, he brought the complaint to our service.

Our investigator reviewed the complaint and concluded that Virgin Money hadn't handled Mr L's claims correctly. Firstly they didn't agree Mr L's claim was purely customer service related. Therefore Virgin Money could've considered the chargeback claim further although they didn't think there was a reasonable prospect of success if it had progressed.

With regard to the S75 claim, our investigator did think there'd been a breach of contract here by J and so considered a 10% price reduction along with 8% interest simple would've been appropriate to put things right.

Mr L didn't agree this was sufficient and requested an ombudsman to reach a final decision for a reduction that felt appropriate.

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 previously issued a provisional decision and said the following:

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 services 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 L paid for this transaction using his credit card, both 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.

This claim would fall under the chargeback reason code "Goods or Services were Either Not as Described or Defective". However the merchant did provide evidence back to Virgin Money stating that Mr L stayed for the whole duration and didn't report any issues. Virgin Money concluded there wasn't a prospect of success with the chargeback claim as they felt Mr L's complaint was tied to customer service issues.

I don't think it was correct to say the claim was about customer services as Mr L's complaint was that he thought a key part of his room wasn't as described.

Still I think the S75 avenue for redress is more appropriate as it affords the possibility of a price reduction while a chargeback claim would usually be for a full refund of the transaction costs. As Mr L did stay in his accommodation for the length of the booking, I don't consider it likely a chargeback claim would've succeeded here in terms of the full refund due.

Therefore while Virgin Money should've done more here in terms of how they assessed the chargeback claim, I won't be asking them to do anything more here. This is because I've gone into more detail below in the application of S75 to Mr L's complaint which I think is better suited under the circumstances.

S75

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.

To assess a valid claim, Virgin Money would've needed to consider all relevant evidence for the alleged breach of contract or misrepresentation. But for there to be a valid claim under S75 there are certain technical requirements and I'm satisfied they've been met here.

The crux of Mr L's complaint is that blackout curtains weren't provided in his hotel room and so the room wasn't to the standards he expected. I've therefore considered this under S75 in terms of whether there was a breach of contract to Mr L.

In reaching my findings I've considered any relevant hotel terms and conditions alongside terms implied by the Consumer Rights Act 2015. In particular the implied terms that services are performed with reasonable 'care and skill' and that the information about a service (such as the description of facilities) is taken to be a part of the contract.

Mr L has provided some key evidence to support his claim. He has also said he wasn't given the opportunity to submit all of his evidence despite contacting Virgin Money stating he had more, such as video evidence. I do think it appropriate to consider all relevant evidence here to determine if there was a valid S75 claim. This includes:

- *A copy of his room booking showing that he booked a Premium Double Room.*

- *A screenshot of the room description on the travel agent site which confirms under 'Bedroom' that black out curtains would be provided. In fact it is listed as one of the 'Highlights' when bringing up a pop up window of the room description.*

- *A photograph of the curtains which don't look to be too heavy so wouldn't be efficient at blocking any light falling on it. The picture looks to have been taken during the day and the light is very visible through them.*

- *A video of the curtains at night and there seems to be flashing coloured light visible through them.*

I understand blackout curtains are designed to block out sunlight and artificial light and are usually thicker and heavier than ordinary curtains. While true blackout curtains should blockout all light, it is possible that some room darkening curtains may still allow some light to filter through.

However it's clear from the photo and video taken that these particular curtains weren't of a heavier material and certainly weren't filtering most of the light out. I'm therefore persuaded based on the relevant evidence that the required curtains weren't provided.

I've reviewed J's website and unfortunately this doesn't provide any terms and conditions with regard to their hotel services and so there is no reference to their position in situations such as these.

I also understand J has said in their submissions that Mr L didn't report any issues, however in his comments to this service Mr L said that he wasn't able to move rooms. There's also insufficient evidence regarding whether there was anything Mr L could've done to mitigate the issue that he experienced. I've therefore considered the fairest way forward on balance with mind to the available evidence.

So with consideration of the implied terms of the CRA and the overall evidence available, I conclude that the accommodation wasn't as described and/or provided with reasonable care and skill.

The CRA also then affords Mr L the right to a price reduction by an 'appropriate amount' when a service doesn't conform to the contract - as has happened here. I need to consider what reduction would be fair with mind to all the available evidence and noting this wouldn't be an exact science.

I see our investigator has said a 10% reduction would be appropriate and explained that the remaining features of the room were as expected. I've considered this and accepted this needs to be factored into the price reduction. But I've also taken in mind the fact that a significant purpose of the room would be for sleeping and so light filtering into the room would've had an adverse impact on Mr L's sleep.

I also note that Mr L's video of the curtains shows the light filtering through creating a very visible blinking effect – and combined with the change in colours from the light source, I can imagine this to be quite distracting. But I must also consider that the room has a number of other amenities which Mr L hasn't raised any concerns about. I have to factor this into the price reduction and so while I know Mr L has asked for a 30 to 40% reduction, I don't think this would be proportionate. And as mentioned prior, there is limited information on whether the impact of the curtains could've been mitigated.

I also note that 5643 points were offered by J during his initial complaint calls to them which would be redeemable against future bookings. At a rough estimation this would be valued at around £40 and while I appreciate they can only be used for bookings with J I must note that this was also offered to address what'd happened.

I therefore think that a 20% reduction would be appropriate here with consideration of the available evidence and what I believe the impact would've reasonably been on Mr L. This would then reflect the loss of enjoyment of staying in what is described as a 'boutique hotel' and so really shouldn't have this happening during a stay.

I therefore conclude Virgin Money should arrange for 20% of the original payment to be credited back to Mr L's account. This payment should also have 8% interest simple per annum applied from the date the S75 claim was declined to the date of settlement. HM Revenue & Customs requires Virgin Money to take tax from this interest. Virgin Money must also give Mr L a certificate showing how much tax they've taken off if he asks for one.

Virgin Money responded to my provisional decision accepting my findings. Mr L hasn't provided a response to the provisional decision however.

As I've not received any further submissions my conclusions therefore remain the same.

My final decision

For the reasons above, I direct Clydesdale Bank Plc trading as Virgin Money to:

• Refund 20% of the transaction amount to Mr L plus 8% interest simple per annum from the date the S75 claim was declined to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 18 September 2025.

Viral Patel
Ombudsman