DRN-5669612

The complaint

Mrs D complains Clydesdale Bank plc (trading as Virgin Money) should have done more to help her get her money back for a holiday she booked that went wrong.

What happened

As both sides already know what happened, I've only summarised the key events below.

In early 2024, Mrs D booked a family holiday through a travel agent (which I'll call "T"). The holiday was priced at £8,585.76. She paid £7,124.85 of that to T with her Virgin Money credit card, and the balance was paid for with other cards.

The booking included return flights with the same airline, transfers, and accommodation at two hotels (which I'll call "Hotel 1" and "Hotel 2") over a two-week stay.

She and her family travelled on around 21 July 2024 and returned on around 4 August 2024. However, she said she had multiple issues with her holiday, including the following:

- Hotel 1 wasn't in a "safe tourist area" as promised.
- Hotel 1 charged Mrs D a $250 USD deposit – which T hadn't mentioned.
- Hotel 1 didn't provide a working room key until days after arrival.
- Hotel 2 was advertised as five-stars but was only three-stars.
- Hotel 2 provided rooms with faults—like a leaking air conditioner—and the replacement rooms weren't connected as booked.
- Hotel 2's buffet food was "awful", and its restaurant reservation system for the a la carte offerings didn't work. So Mrs D and her family had to eat out.
- Mrs D experienced several flight delays.
- Mrs D's luggage was mishandled, leading to a broken suitcase, missing items, and a broken souvenir.

The above list represents Mrs D's key complaint points and is not exhaustive.

Following her holiday, Mrs D complained to T about the above. However, during the same time she initiated chargebacks with some of her other card providers and received £880 total in chargeback refunds. T thought the refunds fairly compensated her, but Mrs D disagreed.

Mrs D then asked Virgin Money to initiate a chargeback on her behalf for £7,124.85 – the amount she paid on her Virgin Money credit card. Virgin Money considered her claim, but didn't think it would likely to succeed, so it didn't proceed with the chargeback.

Virgin Money also considered Mrs D's claim under section 75 Consumer Credit Act 1974 ("section 75"). But as it didn't think she had sufficiently evidenced either a misrepresentation or breach of contract by T, it declined her claim.

Our investigator didn't think a chargeback was likely to succeed. But she thought T failed to provide Mrs D with satisfactory rooms, for which she thought a price reduction was appropriate. That said, as Mrs D had received an effective price reduction of her holiday of over 10% of its cost because of the prior chargebacks, she didn't think Virgin Money was liable to pay anything further under section 75. She did, however, recommend Virgin Money pay Mrs D £100 for the trouble and upset caused from not investigating her claim properly.

Virgin Money accepted the investigator's outcome, but Mrs D didn't. She said that because her other chargebacks were successful, Virgin Money should have also raised one. And if it did, she would have been successful. Additionally, she said that if Virgin Money investigated her section 75 claim properly, she'd have received a 50% price reduction for her holiday.

As our investigator maintained her position, the complaint's come to me for a decision.

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.

It's important to note that Virgin Money didn't supply the holiday. Its role is limited to what would reasonably be expected of it as a provider of financial services. In that respect I consider section 75 and chargeback to be particularly relevant here, so I will focus on these when deciding if Halifax acted fairly.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality. I'd like to assure both parties I've considered everything they've sent.

For example, I haven't commented extensively on the customer service issues Mrs D raised about the various suppliers that cannot reasonably be linked to a misrepresentation, breach of contract, or a chargeback dispute category — and for which aren't claimable under either section 75 or chargeback. Instead, I've mainly focused on the points Mrs D raised where she's supplied sufficient documentary evidence in support.

<u>Section 75 Consumer Credit Act 1974</u>

Under section 75, Mrs D can hold Virgin Money liable for a breach of contract or misrepresentation by T if certain criteria are met. I'm satisfied those criteria are met.

For a misrepresentation to have occurred, Mrs D must show T likely made a false statement of fact (not opinion) that caused her to buy the holiday.

Likewise, the onus is also on Mrs D to evidence a breach of contract occurred. This could be a breach of the explicit terms of her contract, or those implied into the contract by law.

There are certain terms implied into Mrs D's contract with T that are particularly relevant here. For example, as Mrs D's holiday meets the definition of "package" under The Package Travel and Linked Travel Arrangement Regulations 2018 (PTRs), the PTRs apply. And under regulation 15 of the PTRs, T is contractually responsible for the performance of the other travel services on Mrs D's booking, such as those provided by the airline and hotels.

T explicitly incorporates this responsibility into its own contract in its terms and conditions, which state "your contract(s) will be with the supplier(s) or principal(s) on behalf of whom we act as agent, but we will accept responsibility for the performance of those contracts as a package organiser."

Also of relevance is regulation 16 of the PTRs, which in some circumstances obligates T to offer Mrs D a price reduction if what T provided doesn't conform to the contract.

The upshot of all the above is Virgin Money is responsible under section 75 for a breach of not just T's contract, but also the contracts Mrs D has with the airline and hotels. And if there is a breach, Mrs D may be entitled to an appropriate price reduction of her holiday.

I've thought carefully about all the above when thinking about Mrs D's circumstances.

<u>Hotel 1</u>

Mrs D had several problems with Hotel 1, including with its location, the security deposit she had to pay, and a non-working room key.

Mrs D said T described Hotel 1 as located in a safe tourist area. But as the hotel was adjacent to drug users and homeless people in tents, and wasn't located in the tourist area, she said this amounts to a misrepresentation.

As I've not seen any evidence of T describing the hotel in this way, I don't find T misrepresented its location or appearance.

However, even if I accept T had said the hotel is in a "safe tourist area", I'd consider such a statement to be a statement of opinion, not fact, because of how vague the description is. What one person considers "touristy" or "safe" is subjective and open to interpretation, and aren't words that are defined in the contract — so I wouldn't consider these descriptors as misrepresentative of the area's character. Nor have I seen anything in the contract that promised something specific about the hotel's location that Mrs D didn't get.

The $250 USD Mrs D said she had to pay to Hotel 1 doesn't appear to be a hidden charge, but a block on her card taken as security, that was later reversed. So I don't think T misrepresented the price of the hotel. I appreciate Mrs D found the extra payment frustrating and that it meant she had less money to spend. But Mrs D didn't have to pay extra for the hotel and ultimately hasn't suffered any financial loss. And on balance, after considering all the evidence Mrs D provided, I'm not persuaded there's a material detriment here.

Regarding the faulty room key, I agree with Mrs D that she had a reasonable expectation that her key would work. However, it appears the hotel provided reasonable workarounds that minimized the detriment she suffered. The concierge was able to open her room up for her, giving full access to the room she paid for. She also eventually received a working room key in around two days. So as above, I don't think there's any material detriment.

<u>Hotel 2</u>

Mrs D paid extra to upgrade the original five-star hotel she chose to Hotel 2, because Hotel 2 had more pools and T had also rated it as five stars. But she later found out Hotel 2 had rated itself as three stars, and she said a different travel agent rated it as three stars too.

I appreciate Mrs D must have been disappointed about the rating and felt she had effectively paid more for a downgrade. However, unlike other countries, the country Mrs D visited doesn't have an official impartial hotel rating system. So what one person might consider to be five stars, another might consider three stars.

Additionally, T's terms make clear that the star-rating is sometimes based on its own rating system instead. In its terms, it states:

“All ratings are as provided by the relevant supplier or are our own average ratings based on our industry knowledge and customer feedback. Our own ratings are clearly marked and are intended to give a guide to the services and facilities you should expect from your accommodation. Standards and ratings may vary between countries, as well as between suppliers. We cannot guarantee the accuracy of any ratings given. We have made reasonable efforts to establish the official rating of the accommodation and include this within the description of the accommodation on our website.”

I’ve not seen anything to indicate the five stars T gave the hotel wasn’t a genuine representation of its own rating, which it was entitled to use under the terms. And it’s clear to me Mrs D was made aware of the specific hotel she’d be paying for, was able to find out what facilities it provided, and already had knowledge of its facilities beforehand (hence why she upgraded). Overall, I don’t find the rating was misrepresented or misdescribed.

Soon after her arrival, Mrs D found the conjoining rooms she received were dirty and had a leaking air conditioner. She provided some photos in support.

The photos highlight two areas in a room that were moderately dirty, but I haven’t seen what the rest of the rooms look like. There’s also a photo of water on the floor, which Mrs D said was from a leaking air conditioner — but I haven’t seen a picture showing the actual air conditioner leaking, nor anything from Hotel 2 accepting it was faulty. So it’s not entirely clear what had caused the puddle and what the overall state of the room was.

However, it appears it’s not disputed that Hotel 2 provided Mrs D with replacement rooms in response to her previous rooms being unsatisfactory. I appreciate this might have been to keep her happy, rather than because Hotel 2 agreed the rooms were unsatisfactory. But without any further evidence to suggest otherwise, I’m minded to agree Mrs D did enough to show the rooms were likely below the standard a reasonable person would expect.

Instead of providing Mrs D with replacement rooms that were connected, it provided her with two separate rooms, splitting her family. She said this this caused her a lot of distress, especially because it meant it was more difficult to look after her children who had fallen ill.

Mrs D’s agreement shows she was entitled to a “standard plus” room, that would fit her family into one room. It appears she was given conjoining rooms as an equivalent substitute, that she would have been fine with but for the cleanliness and air conditioner problems. So I agree she paid for accommodation that would keep her family together, but for almost her entire week’s stay she received accommodation that kept her family apart.

Being separated from her family would obviously be upsetting for her. Nevertheless, I don’t think it would have entitled her to a further price reduction beyond what she had effectively received from the successful chargebacks. No doubt there would have been some loss of enjoyment of her holiday because the replacement rooms weren’t connected. And her experience of the first night would have been negatively impacted because of the dirty room and faulty air conditioner. But even taking all that into account, like our investigator I find the £880 chargeback refunds Mrs D received, effectively representing a price reduction of about 10% of her holiday’s cost, are more than I’d have considered appropriate for what happened.

I’ve also considered the other complaint points Mrs D raised about Hotel 2, but I don’t find she sufficiently evidenced any additional breach of contract or misrepresentation. For example, I don’t doubt she didn’t like the hotel’s food – but whether it was substandard is subjective, and I don’t think Mrs D’s assertion the food was awful is enough to show it didn’t meet the standard a reasonable person would expect. The food might not meet her own expectations, but that doesn’t mean there’s been a breach of contract.

I'm also sympathetic to Mrs D's frustration with trying to book a restaurant on Hotel 2's website that she says didn't work. As a result, Mrs D said she couldn't use the restaurants and had to pay to eat out, despite paying for an all-inclusive hotel. But I haven't seen any evidence to show booking one of the seven restaurants through other means wasn't possible, such as through Hotel 2's reception or otherwise. Nor have I seen any conversation on record between Mrs D and Hotel 2 discussing the issue. So overall, I'm persuaded Mrs D likely had access to the restaurants and I don't find there's sufficient evidence here to show a material breach of contract.

Airline delays and mishandled baggage

Mrs D said she experienced two sets of two-hour delays with the airline. As the airline hadn't offered her any refreshments, she purchased her own.

The airline agreed there were delays and offered her a $125 USD voucher to use against the next flight. But it said it wasn't obligated to reimburse her for the refreshments she spent during the delays. Mrs D said she was unhappy with the voucher because she was unlikely to use it, and has instead asked for a refund in place of the voucher.

It's not disputed Mrs D experienced flight delays. The airline said as much. However, the key issue here is whether those delays amount to a breach of contract.

Mrs D hasn't said what term was specifically breached. But I imagine her claim is based on the assumption her flights were scheduled to depart at a certain time, that didn't happen, and on that basis there's been a breach of contract.

If Mrs D had referred to the airline's terms and conditions, I don't think it's likely she'd have found them to have provided much assistance. Rule 24 of the airline's terms make clear schedules are subject to change without notice and flight times "are not guaranteed". So I don't think the flight delays amount to a breach of contract.

That doesn't mean Mrs D is not entitled to compensation. There are certain rules set out by international law that, in some circumstances, entitle Mrs D to compensation for both flight delays or damaged luggage.

For example, the airline's contract for carriage under Rule 28 makes clear its liability for damages occasioned by delay are subject to the limitations and defences set forth in the Warsaw Convention and Montreal Convention, as applicable. That means where Mrs D has a right to compensation for flight delays, such a right is borne out of an airline's obligations under international law to pay compensation, rather than out of some contractual obligation to do so. As Virgin Money is only responsible under section 75 for a breach of contract or misrepresentation, it's not responsible for an airline's failure to pay such compensation.

For similar reasons, the airline's responsibility to compensate its passengers for damaged baggage is limited by Rule 28(D)(5) of the airlines' terms, which similarly limits the airline's liability for damaged baggage to the [non-contractual] remedies provided by those same Conventions. So I don't think Virgin Money is responsible for the damaged baggage either under section 75.

Even if I were to accept there might be some obligation under the contract to compensate Mrs D for her damaged baggage and any missing or broken items, I don't find Mrs D had provided sufficient evidence to show the damage was caused by the airline, for broadly the same reasons as our investigator has.

Our investigator highlighted that Mrs D had not followed the airline's requirements that damaged baggage must be reported on arrival. From what I can see, damage to a luggage wheel during the outbound flights wasn't immediately reported, nor was the further damage and other issues with Mrs D's personal items reported straight after the inbound flights.

I'm aware Mrs D had difficulty logging the damage with the airline straight away, but I think the late claims significantly weakened her ability to prove the airline mishandled her baggage. Mrs D has provided photos of the damaged baggage and a broken item in support. But the late claim makes it more difficult to rule out pre-existing damage, in the case of the souvenir—damage resulting from possibly poor packing, or damage or missing items that occurred during parts of the journey that didn't involve the airline. Overall, I'm not convinced there's enough here to show the airline was responsible for any damage or missing items.

In summary, the only complaint point that I'm satisfied Mrs D provided sufficient evidence in support of was the inadequacy of Hotel 2's original rooms and the unconnected replacement rooms. She didn't get what she paid for, and it negatively impacted Mrs D's ability to relax and enjoy her holiday. But as I don't think a price reduction of more than 10% of her holiday is proportionate, I consider the £880 refund Mrs D already received through prior chargebacks to be more than sufficient.

It follows that I don't think Virgin Money acted unfairly by declining a further a refund under section 75. Additionally, I'm not persuaded, as Mrs D suggested, that a more in-depth investigation would have likely resulted in a further refund.

Chargeback

When someone buys something with their credit card, and something goes wrong, in certain circumstances their bank can help them obtain a refund through raising a chargeback.

The chargeback process is run by the relevant card scheme – in this case, that would be Mastercard. As it's a voluntary scheme, a customer cannot insist their bank attempt a chargeback. But if it was able to, I'd expect it to attempt one if there was a reasonable prospect of the chargeback succeeding, as a matter of good practice.

To determine if Virgin Money's refusal to raise a chargeback materially impacted Mrs D's ability to receive a refund, I've considered if her claim would have likely succeeded under Mastercard's chargeback scheme.

As our investigator pointed out, a dispute raised under Mastercard's reason code "Goods or Services Not Provided" would unlikely succeed for the simple reason Mrs D received the holiday she paid for. I appreciate she might not have used some of those services. However, as they were available and she made use of the flights, transfers, and all the hotel nights, I think a Mastercard arbitrator, if it came to that, would have likely decided against her.

For completeness, I've also considered whether raising a dispute under the reason code "Goods or Services Were Either Not as Described or Defective" might have been successful, as to some extent it also aligns with Mrs D's claim.

A claim succeeding under this reason code largely depends on Mrs D being able to assert that T had refused to adjust the price or issue a credit for her holiday. Although she might have been able to make such a claim with her previous chargebacks, once she received £880 in chargeback refunds from her other card issuers, the situation changed. I say that because T would have likely referred to the previous refunds in its defence as forms of credit, significantly weakening Mrs D's claim.

Additionally, the reason code also emphasises the importance of supporting documentation, to evidence any misdescription. As I previously stated, I don't think Mrs D had strong evidence of any misdescription, so I think a claim under this reason code for the full £7,124.85 she asked for would have unlikely succeeded either.

Mrs D said Virgin Money should have raised a chargeback anyway, in case it would have succeeded. I don't agree. As the chargeback scheme is voluntary, I wouldn't expect a card issuer to raise a claim if it was unlikely to succeed, as is the case here.

I appreciate Mrs D's previously successful chargebacks suggest a Virgin Money chargeback would have been successful. But as I explained above, the situation changed once T accepted the previous chargebacks, and any further chargeback was less likely to succeed.

Moreover, card issuers might decide to raise chargebacks with little prospects of success in the hope a merchant might not defend it. I cannot know if that was the case with Mrs D's previous claims, as there's little information available to me to see how those progressed. But the important point to emphasise here is that a previously successful chargeback doesn't necessarily mean a subsequent one for the same type of dispute would likely succeed.

In short, I don't find Virgin Money acted unfairly by not raising a chargeback. And even if it did raise one, I don't think it would have likely succeeded. Either way, I don't think Mrs D's chargeback claim has been materially impacted by Virgin Money's actions.

<u>Claims handling</u>

I don't think Virgin Money handled Mrs D's chargeback claim unfairly. However, I find it should have done more to investigate Mrs D's section 75 complaint points and explain its position more transparently.

Mrs D put a lot of effort detailing what went wrong with her holiday. And in response, Virgin Money had only lightly addressed some of those points. I don't think Virgin Money's further responses to Mrs D's follow-up queries to clarify matters were adequate either, causing her frustration and continued confusion over why Virgin Money hadn't upheld any of her claims.

Our investigator recommended Virgin Money pay Mrs D £100 for the distress and inconvenience caused. Having considered what's fair and reasonable in all the circumstances, I think the £100 she recommended is a fair reflection of the impact Virgin Money's poor claims handling had on Mrs D.

My final decision

My final decision is that I partly uphold this complaint and direct Clydesdale Bank plc (trading as Virgin Money) to:

- Pay Mrs D £100 for the distress and inconvenience it caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 18 August 2025.

Alex Watts
Ombudsman