

## The complaint

Mr F has complained about the way Clydesdale Bank Plc trading as Virgin Money ("Virgin Money") dealt with a claim for money back in relation to a cruise he paid for with credit it provided.

## What happened

In July 2024, Mr F used his Virgin Money credit card to pay for a 4-night cruise for himself, his wife and his infant child with a supplier I'll refer to as "T". Mr F paid £805.86 for the cruise itself. I understand he also incurred additional costs such as for flights to and from the pick-up and final destination points, but he paid for them separately.

Mr F says he and his family incurred an array of problems during their stay on the ship ranging from feeling unsafe on the ship, to being unhappy with the quality of food provided to name a few. He says he initially complained to T, who he says apologised during a phone call and Mr F says it accepted that it was in the wrong but explained it wouldn't refund for these reasons.

Mr F then contacted Virgin Money to both make a claim for chargeback as well as making a claim under Section 75 of the Consumer Credit Act 1974 ("s.75"). He felt that the holiday had been both misrepresented to him and that T was in breach of contract.

He said T had made a number of statements that turned out to be untrue from the type of cola that would be serviced, to the suitability of the cruise for children and the activities available for children, as well as assurances that he'd be able to visit a specific city while stationed at a port.

Mr F also felt that T had breached the contract by not exercising reasonable care and skill during the cruise for a number of reasons. He said that the safety briefing was held in a "smoking area" which was unsuitable and unsafe for his child, that passengers routinely interacted with his child often touching the baby which irritated and hurt their child, and Mr F's wife was, at one point, pushed while carrying the child, and although she didn't fall over, they were left feeling unsafe and were provided with no support by T's staff. He added that he felt the quality of food provided was poor, not fresh and stale.

Due to the above situation, Mr F didn't utilise the food package, instead buying food and drinks while they were at ports, and they largely stayed in their room to prevent people from harming his wife and child. This also meant they did not use the facilities aboard the ship.

Mr F wanted a full refund of everything he'd paid. Virgin Money considered the claim under MasterCard's chargeback rules but didn't claim a refund saying Mr F had stayed on the cruise for the full duration of the booking so under the rules it couldn't claim a refund. It later also explained that it didn't feel he met the requirement for a successful s.75 claim. It said he hadn't evidenced that there had been a breach of contract and that the terms and conditions of the cruise said it could change the advertised ports for any reason.

Mr F decided to refer his complaint to the Financial Ombudsman. He re-iterated that he hadn't received the services that he'd paid for. He felt T had breached the contract and he didn't understand why Virgin Money said there was no breach of contract. He also felt that if T had given correct information about the cruise, he would not have booked it.

Our investigator looked into things and felt that Mr F hadn't provided sufficient evidence of a misrepresentation or breach of contract so didn't think his complaint should be upheld.

Mr F didn't agree explaining he'd provided a detailed explanation as to how T had breached the contract and misrepresented the cruise to him. That T had apologised which is an admission of guilt.

As things weren't resolved the complaint has been passed to me to decide.

### **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.

Firstly, I'd like to reassure Mr F, that I have considered all his concerns carefully, but I will only be dealing with the most salient parts of his complaint in this decision as I'm required to decide matters quickly and with minimum formality. So while I may not comment on everything he's said, I have thought about it and considered it as part of my assessment of this complaint.

#### *Chargeback*

Firstly, it may be helpful to explain that each credit card provider acts under specific chargeback rules that may be different with other credit scheme providers. Chargeback allows for a refund to be requested where money was paid using a plastic card in certain scenarios, such as when goods or services are defective or not received. Chargeback is designed to be a simple process to settle complaints. The only matters to be considered are the rules set by the card scheme to which the consumer's card belongs, along with the facts of the case. It is not designed to settle complex disputes or to consider legal arguments. The rules are very specific and detailed and usually there's little room for discretion – and they are simply applied to a case as they are.

In this case Virgin Money said that the rules under which it operates (MasterCard), Virgin Money was unable to make a claim as Mr F had stayed on the cruise for the duration of the trip. Mr F however says, he hadn't been able to leave the ship early as it would have costs significant sums of money which he didn't have so he was left with no option but to continue on the cruise. But as explained above, he says he did not use the on-board facilities or the food and drinks aboard the ship, and instead they stayed in the room, so essentially he felt he hadn't used the service he paid for.

I understand Mr F's point of view but having checked the rules, they do only offer the ability to seek refunds in a limited number of situations such as the services being denied by the merchant for example. And based on the facts of this case, I don't think it was unreasonable for Virgin Money to conclude that his situation didn't fall into one of the categories where a refund could be successfully claimed. I understand his reasons for not utilising the services, but this doesn't entitle him to a refund under the scheme rules.

I would reiterate that the rules are made and run by MasterCard not Virgin Money, so Virgin Money is unable to apply any discretion here. So, while I sympathise with Mr F's position, given the card scheme rules, I don't think Virgin Money could have done anything differently

here. So, like our investigator, I don't think Virgin Money's response to the dispute was unreasonable under the scheme rules.

## Section 75

I understand how disappointed Mr F feels given he's paid for a holiday cruise experience and believe his enjoyment would have been affected by the circumstances set out. But it may be helpful to explain that I need to consider whether Virgin Money – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr F's claim. It's important to note Virgin Money isn't the supplier. S. 75 is a statutory protection that enables Mr F to make a 'like claim' against Virgin Money for breach of contract or misrepresentation by a supplier when goods or services were bought using a credit card.

But it's important to note, that Virgin Money isn't T, and s.75 doesn't make Virgin Money liable for everything that may have gone wrong with T. It's a limited protection that enables consumers to seek a remedy from their finance provider in a narrow set of circumstances namely where there is either breach of contract and/or misrepresentation made by T that can be established with evidence.

There are certain conditions that need to be met for s.75 to apply. From what I've seen, those conditions have been met, and Virgin Money also appears to agree that s.75 applies.

It may be helpful to explain that there are consumer rights laws and regulations that underpin contracts like this which I've taken into account such as the Package Travel and Linked Travel Arrangements Regulations 2018 (PTR) as well as The Consumer Rights Act 2015 (CRA).

### Misrepresentation

To make a claim for misrepresentation, Mr F would need to evidence that the cruise has been misrepresented to him and that this caused him to suffer loss. We generally assess cases using the definition of a misrepresentation as, an untrue statement of fact or law made by one party (or his agent) to a second party which induces that second party to enter the contract, thereby causing them loss.

### Breach of contract

In order to uphold Mr F's s.75 claim on the basis that there has been a breach of contract, Mr F would need to evidence that T breached a term of the contract – and that caused him to suffer loss. He would have to show that either, there was a breach of an express term of the contract (such as a specific written term that had been breached) or whether there has been a breach of an implied term. The Consumer Rights Act 2015 (CRA) implies terms into the contract that services must be delivered exercising reasonable care and skill.

### Evidence

However, in order to assess either a claim for misrepresentation and/or a breach of contract – I'd need to see evidence that the cruise was either misrepresented to Mr F by T, and/or whether any poor service amounts to a breach of contract as well. Mr F hasn't been able to provide any evidence other than his own belief and viewpoints of what he experienced. While this is detailed, there isn't for example booking forms/adverts, information packages/itinerary breakdowns etc which would have demonstrated how the cruise was presented to him, and/or what T had agreed to offer in terms of food and drinks or facilities for children or ports and cities that would be visited. He also hasn't provided communications/emails from T either before or after the cruise setting out exactly what it had offered and not delivered.

Mr F would need to demonstrate with evidence of the failings he's mentioned and that these were as a result of a breach of contract or misrepresentation by T to make a claim. Mr F's opinion that the quality of the food was poor, or that he was assured that T would serve branded cola free of charge for example are not sufficient to enable me to uphold his complaint. Being unhappy with the service, or the cruise not meeting his expectations whilst disappointing, are not sufficient to make a successful claim under s.75.

For example, there is nothing to show that T's agent told him that the package included branded cola, that there would be multiple services available for children, or that the cruise was baby friendly. I understand he wished to visit a particular city during the cruise, but he wasn't stationed at the port long enough to make the journey, and no excursions were offered by the cruise itself. But he also accepted, that when he booked the cruise, he couldn't book any excursions as they hadn't been finalised which indicates no guarantees had been made as they had not been finalised. And as explained by our investigator, it does look like the contractual terms allowed T to make changes to the journey of the cruise.

I appreciate that it is difficult for Mr F to provide evidence as he says he misplaced the booking paperwork and no longer has access to the online tools that would have shown what was agreed. But as Mr F is making the claim, the onus is on him to provide the evidence and other than providing his testimony, and saying T apologised to him on a call, there is a distinct lack of evidence to support either his claim for misrepresentation or breach of contract.

Based on what I've seen, I don't think it's unreasonable that Virgin Money didn't uphold his claim based on the available evidence. While I sympathise with Mr F's position, s.75 is a legal claim, and the onus is on Mr F to provide evidence to support his claim and I can't safely conclude there has been a breach of contract, or misrepresentation based solely on his word alone. I want to reassure Mr T, that I don't disbelieve him, I can see he feels strongly about these issues, and I don't doubt the sincerity of his testimony. But he is obligated to support his claims with evidence, and I don't think it is unreasonable to conclude that Mr F hasn't submitted sufficient evidence to demonstrate that in this case.

I want to be clear, that I am not concluding that something hasn't gone wrong, I can see Mr F feels strongly that the cruise hasn't been delivered exercising reasonable care and skill and that T made multiple statements that he feels turned out to be untrue. But without evidence of what was offered to him, it is difficult to conclude that T hasn't delivered what it offered.

I would add that I fully appreciate how unsettling Mr F and his wife must have felt when other passengers were interacting with their child, when allegedly another passenger pushed his wife and the lifeboat safety briefing being on the smoking area. I appreciate he feels the staff didn't do anything to support them especially given they had a young child with them.

While I appreciate Mr F's concerns that the safety briefing being held in the evening and in a smoking area might've been poorly thought out for young families – I don't think this one interaction means the overall service he received was so poor that he should get all his money back. And I don't think s.75 enables Mr F to make Virgin Money (or T) responsible for policing the everyday interactions between passengers unless that behaviour was particularly disruptive. Cruise ships like T can take enforcement action against passengers if they act in a particularly unruly manner by asking them to disembark for example, but understandably this is withheld for serious situations. Whether the interactions warranted intervention is also subjective and it would be difficult for Mr F to evidence that the behaviours of other passengers were so disruptive that it required intervention. As explained above, there are evidential requirements that would be difficult to provide here.

I'm not underestimating the discomfort Mr F and his family might've felt, but I'm afraid I haven't heard enough to suggest that the service received fell short enough to be deemed unreasonable and that this would amount to a breach of contract. As explained above, s.75 doesn't make Virgin Money liable for everything that T might've done wrong. So, while these instances might be examples of customer service issues, I'm not satisfied that any of this amounts to a misrepresentation or breach of contract which are the only two instances where Virgin Money would be liable to offer a remedy.

While I am sorry to hear Mr F is unhappy, with s.75 in mind, I don't find there are grounds to direct Virgin Money to refund him the full cost of the cruise. I also don't think Virgin Money's response to his chargeback claim was unfair. I should, however, point out Mr F doesn't have to accept this decision. He's also free to pursue the complaint by more formal means such as through the courts.

### **My final decision**

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 9 October 2025.

Asma Begum  
**Ombudsman**