

The complaint

Mr B complained about the way Clydesdale Bank Plc trading as Virgin Money (Virgin Money) dealt with a claim for a refund for a package holiday he bought using his credit card.

What happened

The circumstances of the complaint are well known to the parties, so I'm not going to go over everything again in detail. In May 2024 Mr B booked a package holiday for himself and his family for seven nights including flights, transfers and hotel through an online travel agent I'll call O. He paid around £4,100 using his Virgin Money credit card and was due to travel later on in May 2024. The cost for the hotel was around £1,256 after a discount was applied.

Mr B was able to use the flights and transfers but was unhappy with the hotel on arrival.

During his stay at the hotel Mr B raised several concerns. In summary these included:

- Major building works were ongoing, which meant there was building noise and debris, and part of the pool was closed, there was a sewage smell and this impacted on the enjoyment of the holiday.
- Some of the restaurants were unavailable or didn't exist.
- The minibar wasn't restocked fully each day.
- They didn't get towels for the whole group despite asking on several occasions and didn't get the maid turnover service on a few days.
- Mr B's children became ill, and he had concerns this was because of the unsanitary conditions.
- There were problems getting food such as long queues, food running out and not replaced, and being served raw food.

Mr B raised his concerns with the hotel, but it didn't resolve the issues. Mr B said it offered compensation for three or four nights' stay, a free upgrade on the next visit, or a refund of three of the nights Mr B stayed. However, Mr B said he would contact O on his return before giving a decision on these offers. Mr B complained to O when he returned in June 2024, but didn't get a response until around six months later when it offered a credit voucher of £125 for his next booking.

In September 2024 Mr B raised a dispute with Virgin Money. Virgin Money declined to raise a chargeback as Mr B stayed for the duration of the holiday. It also didn't agree there was a breach of contract it could be held liable for under Section 75 of the Consumer Credit Act 1974 (Section 75). It said that the issues Mr B experienced were customer service related as the contract for the package holiday had been fulfilled.

Unhappy with Virgin Money's response Mr B referred his complaint to the Financial Ombudsman. Our investigator reviewed the complaint and considered Virgin Money acted fairly in its decision not to raise a chargeback as Mr B had utilised the services. However, he also considered the response to the Section 75 claim and recommended that Virgin Money pay £377 to reflect a price reduction for the loss of his enjoyment.

Virgin Money agreed with the investigator's assessment. Mr B did not. He said that he was misled at the point of sale and wouldn't have booked the holiday had he been told about the building works, health and safety risks and key facilities being unavailable. He said there was a misrepresentation. He didn't think by staying for the full duration of the holiday, this negated the misrepresentation and leaving or seeking alternatives weren't a realistic option. He was unhappy that the hotel was separated from the other travel arrangements and wanted a full refund for the package holiday he booked.

As the matter remains unresolved it has been passed 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.

I want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I want to assure Mr B and Virgin Money that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Where evidence is incomplete I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

I'm sorry to hear that Mr B didn't get the holiday he expected and I understand his disappointment.

I understand Mr B is unhappy that O didn't agree to refund him the cost of the holiday because of the issues he highlighted. But I need to consider the actions of Virgin Money as the financial services provider in this complaint. I'm not considering a complaint about O or the hotel. I've considered if Virgin Money has acted fairly and reasonably in the way it handled Mr B's request for a refund.

I've gone on to think about the specific card protections that are available. In situations like this, Virgin Money can consider assessing a claim under Section 75 or raising a chargeback. As the investigator has upheld the complaint under Section 75 and Mr B hasn't objected to the investigator's finding on the chargeback claim and responded to say why he doesn't agree with the position on the Section 75 claim, I have primarily focused on this.

Section 75

Under Section 75, Virgin Money is jointly liable for any breaches of contract or misrepresentations made by the supplier of goods or services – which is O in this case. In order for there to be a valid claim under Section 75, there needs to be a debtor-creditor-supplier ('DCS') agreement in place and the transaction needs to be within certain financial limits. I'm satisfied the criteria has been met for a claim to be considered.

The Consumer Rights Act 2015 (CRA) is also relevant to this complaint. The CRA implies terms into the contract that the services will be performed with "reasonable care and skill". The CRA also sets out what remedies are available to consumers if statutory rights under a goods (or services) contract are not met.

The Package Travel and Linked Travel Arrangements Regulations 2018 ("PTRs") are applicable to the contract too; it makes O responsible for the performance of the contract. The PTRs also set out that O is to provide an appropriate price reduction where parts of the holiday contract are not performed correctly.

Mr B has claimed a misrepresentation occurred. Mr B has provided information to show that O advertised a number of facilities and services which he said were unavailable or lacking and he experienced a number of issues with the hotel which meant he didn't get the luxury experience he booked. This included the building work which he wasn't informed of. Mr B has argued that he should get a full refund

In order to consider if a misrepresentation occurred, I have to consider if a false statement of fact was made, which induced Mr B into the contract.

It's important to distinguish between a false statement that induced Mr B (a misrepresentation) and something that was simply a misdescription. I think as Mr B used the services this could impact what he could fairly claim for. I have noted that Mr B said he had no option but to stay, but by doing so I think there are some concerns that he affirmed the contract. I think even if there were a misrepresentation, it is impossible to unwind the contract because the service was largely "performed", so on balance I don't think Virgin Money could fairly have agreed to the usual remedies where a misrepresentation occurred. However, I think that as the services weren't as promised, Mr B may have had a right to claim for a breach of contract which he could claim damages or a price reduction for. I've therefore considered if what has been offered is fair.

I can see from the communication Mr B had with the hotel, O and Virgin Money that he and his family experienced a number of issues. I've thought about what Mr B said he was unhappy with. I can see that Mr B was informed that there were certain restaurants that were meant to be available, that weren't and that he may not have got the luxury experience he was expecting because of the building works, which could be considered a breach of contract. I think some of what Mr B was unhappy with is also subjective like the smell and the queues for food, so I'm not persuaded that everything Mr B complained about could be claimed for under a breach of contract. I'm also conscious that Mr B was able to utilise the flights for the holiday booking and had use of other facilities at the hotel during his stay.

In line with the PTRs and remedies available under the CRA I'm persuaded that a fair remedy would be damages or a price reduction. When thinking about a sum I'm mindful that the flights and transfers were used without issue. As I've previously said Mr B and his family stayed in the hotel throughout the holiday. I appreciate the challenges moving hotel could have caused but when thinking about a price reduction I do need to take this into consideration.

Mr B paid £1,256.63 for the cost of the hotel. I have considered that the hotel offered a refund of around three nights' stay and O offered a voucher for £125, although I appreciate Mr B may not have accepted these. I've considered what Virgin Money could be held liable for. There's no exact science on how to calculate a price reduction but keeping in mind that Mr B did have use of the facilities in the hotel I'm not minded to depart from the investigator's recommendation of 30% of the hotel cost equating to £377 which I think fairly reflects the issues Mr B experienced.

Chargeback

Chargeback is based on the relevant card scheme rules. In this case it's the Mastercard scheme rules. A card issuer can attempt a chargeback on behalf of a cardholder where they

dispute a transaction with a merchant, if they meet the criteria of the rules. A chargeback is not guaranteed to succeed and a card issuer does not have to raise one.

In this case Virgin Money didn't raise a chargeback. I've thought about whether Mr B would have had any different recourse under the provisions of a chargeback claim. Mr B would have been claiming under rules relating to services not as described or defective. As he stayed for the duration of the holiday, even if I were to think of it quite generously, the most he could have claimed for would be aspects of the holiday which weren't described or defective – not the whole holiday, which would be difficult to apportion a cost to. But even if there was an opportunity to do so, I don't think he would have been in a better position if a chargeback claim had been raised than what I think Mr B should receive as a refund under a Section 75 claim.

Claim handling

I understand Mr B is also unhappy with the way Virgin Money dealt with his claims and the complaints he made. I can see Mr B has communicated articulately with all parties about the issues he experienced. And although I think Virgin Money is liable for a price reduction for a breach of contract under a Section 75 claim, I think it asked Mr B for the relevant information to consider a chargeback and Section 75 claim within a reasonable time and provided its answers soon after. So, even though I've reached a different conclusion, I won't be asking it to pay compensation for the handling of the claims.

Putting things right

I know Mr B will be disappointed with my decision. I'm satisfied that Virgin Money should pay £377 to reflect a price reduction for the issues Mr B experienced for the package holiday he booked.

My final decision

My final decision is that I uphold Mr B's complaint and direct Clydesdale Bank Plc trading as Virgin Money to pay Mr B £377 in respect of his Section 75 claim. I make no further award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 2 December 2025.

Amina Rashid
Ombudsman