

## The complaint

Mr B has complained about the way Clydesdale Bank Plc trading as Virgin Money (VM) dealt with a claim for money back in relation to a purchase he'd made on 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. But, to summarise, Mr B used his VM credit card in January 2023 to pay £1,368 for an accommodation booking through a merchant I'll call "S" for a stay in December 2023. S says it connects travellers seeking extended hotel stays with accommodations. Mr B says the booking was non-refundable which he accepted based on the terms and conditions.

From what I can see, the booking was for two adults and two children for four nights' accommodation. Mr B was sent a booking confirmation saying:

Taxes & fees	£175.70
Total amount	£1,368

The booking confirmation also set out there were additional estimated fees of \$876.88USD to be paid at the accommodation.

Mr B has also shown us a screenshot of the booking page (after the booking was made) that says the estimated total amount of taxes and fees was \$1,890.88USD.

Mr B said he contacted S to discuss further because he wanted to be clear on what he needed to pay for. The information he'd seen was conflicting. I understand S wasn't able to give him details because it didn't understand the fees either. But it offered to contact the accommodation provider for more details. Mr B says S emailed him to say the following fees would apply:

Hotel incidental fees	USD 150/night
Residential fees	USD53+ tax per person per night

Mr B was unhappy because he says the fees/charges he was expected to pay were much more than he says he was led to believe. He complained to S.

Mr B says S told him that in order for it to speak to the accommodation provider about a refund it would need to cancel the booking. Mr B says he was concerned because he didn't want to be left with no booking and no refund, but he says he was told this was the only way to obtain the refund, so he agreed. Mr B says on 28 January 2023 S told him the accommodation provider had refused the refund and no money would be returned.

Mr B says he tried to resolve things with S by explaining he'd be happy to have his payment refunded as a voucher. He said the estimated fees seemed extortionate, and he would not have made the booking had S been clearer. He said the estimated fees weren't made clear

in the advertised rate nor were they within the booking confirmation or within the terms and conditions.

Mr B contacted VM to ask for help getting his money back. VM said it couldn't find a breach of contract and that Mr B was bound by S's terms and conditions. It said it was unable to pursue a chargeback on that basis. And it said it couldn't progress the claim under section 75 because there was no breach of contract. Mr B decided to refer his complaint to the Financial Ombudsman.

One of our investigators looked into things and decided to uphold the complaint. She didn't think there were grounds for a successful chargeback, but she also didn't think S carried out its service with reasonable care and skill. She thought after reviewing things Mr B was led to believe he'd only have to pay a further \$150 in addition to the \$876 – not significantly more than this. And she said VM should rework the account as if the £1,368 had been refunded, and to add annual simple interest if that resulted in a credit balance.

VM said upon review it disagreed that in addition to the \$876 Mr B would've had to pay a further \$150. It said the terms said \$150 was payable for each guest, which equalled \$600.

Our investigator didn't think the terms were clear enough. But VM said if Mr B was unsure, he could have challenged or clarified them prior to booking.

As things weren't resolved, the complaint was passed to me to decide.

I decided to write to VM about the case. In summary, I highlighted again the steps Mr B took when making the booking and provided screenshots of what he'd sent us. I said during the booking, S set out there were additional estimated fees and/or taxes of around \$875USD. But I also referred to a screenshot he'd taken of what I think was shown *after* the booking was made, which indicated the estimated total amount of fees jumped to around \$1,890USD. I said this must have been confusing and concerning for Mr B to see.

I explained that I didn't think it was fair to simply say Mr B could have checked before booking if he was unsure. I thought it was reasonable for him to have relied on what he was told, and that the estimate was calculated with reasonable assumptions. Moreover, it seemed the information changed after he'd made the booking, so it was too late by that point.

I explained Mr B contacted S to clarify the fees and set out what it told him. Mr B did his own calculations and thought he'd be required to pay significantly more than the estimated cost he'd originally been given. It looks like he tried to mitigate the situation by saying he was happy to put the cost to another hotel, but he was told the only option was to cancel the booking to see if he could get a refund. He did this, but the accommodation declined to refund.

I said it looked like something went wrong for Mr B. I didn't think S gave clear information about the costs. I also noted that S's website had changed for this property and rather than setting out estimated costs it now sets out a destination fee that's payable – so it's definitive.

I said it looks like all the parties had struggled to figure out exactly what Mr B was required to pay at the hotel. The range of costs was significant. And I said I could understand his concern that it looked as though the final figure was significantly more than what he was initially led to believe.

I explained VM is jointly liable for breach of contract or misrepresentation by virtue of section 75 of the Consumer Credit Act 1974 (CCA). And it's also responsible for antecedent

negotiations carried out by S under section 56 of the CCA. S acted as VM's agent in those negotiations.

While I thought matters were complicated because there was another party involved (the accommodation provider), I thought there could be strong grounds to say that VM is jointly responsible for what's gone wrong.

I said while I appreciated the booking came with an estimate i.e., not a definitive figure, there ought to have been an expectation that this has been prepared on a reasonable basis. I said given the evidence Mr B supplied, the estimate was potentially unreasonably inaccurate. It arguably had not been put together reasonably. I said S could be held liable for not carrying out its service with reasonable care and skill, which leads to a breach of contract that VM is jointly liable for.

Moreover, I said if the estimate was wildly different to what Mr B needed to pay, I think he'd put an argument forward that the price was misrepresented or that there was some sort of failing during the negotiations that VM is liable for under section 56.

I also said I'd not spent time thinking about the potential chargeback options, but I imagine Mr B would also be claiming the service (from S) wasn't as described or it was defective. Or that there'd been a misrepresentation and that any one of those options may have had a reasonable prospect of success through chargeback. I noted VM said it needed to evidence a breach of contract for a chargeback, but I explained I'm sure it could appreciate that there's a difference in the chargeback dispute conditions compared to its liability under section 75. I said I didn't think it properly set out its reasoning for not pursuing the chargeback.

Finally, I also questioned whether it was fair for Mr B to be forced to pay the full cost of the booking as a cancellation fee in the circumstances. And I questioned whether it was fair that the estimated fees could be increased so significantly without given Mr B the opportunity to cancel.

VM responded to say as the booking was with a third-party section 75 doesn't apply. So I'm now deciding 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 want to acknowledge 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'm required to decide matters quickly and with minimum formality. But I want to assure Mr B and VM 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.

I also want to say I'm very sorry to hear that Mr B had a problem with the booking. I appreciate it cost a significant sum.

What I need to consider is whether VM – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr B's request for getting money back. It's important to note VM isn't the supplier. I've gone on to think about the specific card protections that are available. In situations like this, VM can consider assessing a claim under section 75 or raising a chargeback.

Section 75 is a statutory protection that enables Mr B to make a like claim against VM for breach of contract or misrepresentation by a supplier paid by credit card in respect of an agreement it had with him for the provision of goods or services. But there are certain conditions that need to be met for section 75 to apply. The value of the transaction falls within the financial limits. But there also needs to be a debtor-creditor-supplier (DCS) agreement in place. Having multiple parties involved can impact the arrangement. Mr B's contract is with S, so I've thought about whether there's a breach of contract or misrepresentation with S that VM would be responsible for. While I take VM's point on there being another party involved, I think I can consider whether S breached or misrepresented the contract.

I'm conscious that from looking through the steps Mr B took to make the booking it does seem like that it wasn't until after he'd made the booking that he was informed the estimated costs payable direct to the accommodation were higher than he was led to believe. While I appreciate the terms and conditions say the costs were an estimate, and that it might not have been S's decision what those costs were, I think S has to take some responsibility for the way it presented the costs. I've seen in terms and conditions S seeks to limit its liability with regards to misdescriptions from the accommodation providers and problems outside of its control. But by giving a higher estimated fees figure after Mr B made his booking, on balance, I think this shows S has made a mistake in the way it set out the estimated fees because otherwise, there wouldn't have been differing amounts. I've not been given a reasonable explanation for why it appears as though S presented the estimated fees as being around \$1,000 more after the booking was made. I don't think that was outside of its control.

It's not clear why S couldn't have supplied more accurate information prior to the booking being made. Particularly given it gave a higher estimated figure for additional costs after Mr B had paid – by which point it was too late for him to change his mind because he'd made the booking and it was not cancellable. I'm also conscious the estimated figure it was able to give was very specific and it now seems able to provide definitive costs.

In all the circumstances, on balance, I think there's a strong argument S didn't carry out its service with reasonable care and skill by not advertising the estimated fees correctly, which would be considered a breach of contract that VM is liable for. Moreover, I think there's also grounds to say that by giving such a misleading estimate this could be considered a misrepresentation that VM would also be liable for.

The chargeback process provides a way for a card issuer to ask for a payment to be refunded in certain circumstances. The chargeback process is subject to rules made by the relevant card scheme. It's not a guaranteed way of getting money back.

While it's good practice for a card issuer to attempt to chargeback where certain conditions are met and there's some prospect of success, there are grounds or dispute conditions set by the relevant card scheme that need to be considered. If these are not met, a chargeback is unlikely to succeed. And something going wrong with a merchant won't always lead to a successful claim.

VM has said it was unable to pursue a chargeback on the basis of it not being given sufficient evidence of a breach of contract or misrepresentation. But it's not added further comments to the evidence I sent it that Mr B had provided that indicates the service wasn't as described. So there might've been a reasonable prospect of success if the claim had been raised on that basis. There wouldn't have been the same DCS concerns that VM raised. And I think Mr B's evidence did indicate something had gone wrong. So even if I'm wrong about VM's liability under section 75 I think there'd have been a reasonable prospect of success through chargeback.

Taking everything into account, I find VM should rework Mr B's account as though the £1,368 was refunded from the date it declined the claim. If this results in a credit balance, it should add 8% simple annual interest from the date that credit balance arose to the date of settlement.

If VM considers it is required to deduct tax from my interest award it should provide Mr B a certificate of tax deduction so he may claim a refund from HMRC, if appropriate.

### **My final decision**

My final decision is that I uphold this complaint and direct Clydesdale Bank Plc trading as Virgin Money to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 9 April 2024.

Simon Wingfield  
**Ombudsman**