

The complaint

Mr J complains about the way in which Clydesdale Bank Plc, operating under its Virgin Money credit card brand, handled his claim after a holiday company provided him with an unsatisfactory holiday package.

What happened

In July and August 2023 Mr J took a two-week package holiday with his family (two adults and one child). He had paid for the holiday with his Virgin Money credit card. The cost was just over £4,000.

Mr J was unhappy with one aspect of the holiday. Specifically, he said that there was no evening entertainment at his hotel, even though that had been specifically referred to in the advertisements he had seen. And it had been one of the reasons he chose the hotel he did.

Mr J says that he complained at the time, but the holiday company (which I'll call "T") would only move him and his family to a different hotel at an additional cost of €800. It offered £50 by way of compensation. Mr J did not accept that offer and took the matter up again when he and his family returned home.

T said that the entertainment had not been advertised as being daily, so did not accept that it had done anything wrong. It did however send him holiday vouchers to the value of £200.

Mr J did not think T had done enough to resolve his complaint, so he referred the matter to Virgin Money. As he had paid for the holiday using his credit card, he said that Virgin Money, as its issuer, was equally liable with T to meet his claims.

Virgin Money declined Mr J's claim. It said that any claim Mr J might have was against the hotel, not T. And, since the card payments had been made to T, section 75 of the Consumer Credit Act 1974 ("section 75") did not apply.

Mr J referred the matter to this service, where one of our investigators considered what had happened. She thought that, because Mr J had booked a package holiday, section 75 could apply. She did not believe however that Mr J had shown that there was a breach of contract on the part of T and so did not recommend that the complaint be upheld.

Mr J did not accept the investigator's assessment and asked that an ombudsman review 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.

Where goods or services are paid for with a debit or credit card and a dispute arises, it is often possible to resolve that dispute through the chargeback process. Chargeback is a scheme run by the card schemes (in this case, Mastercard). A card issuer (here, Virgin Money) raises a claim through the scheme against the merchant's provider of card facilities.

There is no legal or regulatory duty on a card issuer to make a chargeback claim, although this service takes the view that a claim should usually be made where there is a reasonable prospect of success.

Mr J's claim here was that his hotel had not provided the full experience he had been expecting. He had however received flights, transfers and hotel accommodation. Whilst chargeback can have the effect of resolving disputes between consumers and suppliers, it is primarily a means of resolving payment disputes – for example, where a payment is duplicated or a promised refund has not been made. Virgin Money took the view that this was not an appropriate case for a chargeback claim, and I agree that was a reasonable approach. I think it most unlikely that it would have been successful, especially as T had already declined Mr J's claim and would no doubt have sought to defend a chargeback claim as well.

One effect of section 75 is that, subject to certain conditions, an individual who uses a credit card to pay for goods or services and who has a claim for breach of contract or misrepresentation against the supplier of those goods or services has a like claim against the credit card provider.

The holiday provider was not the direct supplier of Mr J's flights, hotel accommodation or airport transfers. Its primary role was to book those elements of the holiday and to pass payment on.

However, where a holiday is booked as a package – as was the case here – regulation 15 of The Package Travel and Linked Travel Arrangements Regulations 2018 makes the organiser responsible for the performance of the services included in the travel contract. And it is not sufficient that services are provided; they should be of a satisfactory standard in the circumstances.

I have therefore considered whether the individual suppliers provided, to a satisfactory standard, the services which had been arranged.

Mr J says that he was expecting daily entertainment at the hotel. The online information did say that the hotel provided regular DJs and entertainment, but I don't believe that necessarily meant that it would be daily. And I note that the current version of the website refers to entertainment being provided "a few nights every week". However, whilst there was no suggestion that entertainment was a daily feature, Mr J and his family were at the hotel for two weeks at the height of summer, so I think it was reasonable to expect that, if entertainment was advertised, some would be provided.

Mr J says that there was no entertainment at all for the duration of his trip. Our investigator was unable to obtain any information from the hotel about what (if anything) was available. In the circumstances, I have considered the complaint on the basis that nothing was available.

Any entertainment provided by the hotel would have been included in the overall price of the holiday package. Mr J did not have an option of a holiday at the same hotel with or without entertainment, so it was not priced separately. I have therefore considered what the value of evening entertainment might have been to Mr J and his family; and I recognise of course that different people might have different views about how important entertainment is to their enjoyment of a holiday.

Of course, most of the cost of the holiday would have been taken up by the flights and hotel accommodation. They were provided. Mr J's only complaint is that some hotel facilities were not available. It seems to me, therefore, that the monetary value of evening entertainment was relatively small in comparison with the overall cost of the holiday.

It is not for me to say whether Mr J does in fact have a claim against T – or indeed, the hotel. Nor is it for me to decide whether he has a claim against Virgin Money under section 75. What I must do is decide what I consider in all the circumstances to be a fair resolution of Mr J's complaint about Virgin Money. And in doing that I must take into account any relevant law, including section 75.

The relevant circumstances here include, in my view, T's offer of £200 in holiday vouchers. Overall, I think that was a fair level of compensation for Mr J's disappointment for not having the entertainment he was expecting. It follows that I think that Virgin Money's overall response to Mr J's section 75 was reasonable – even though I do not fully agree with its reasoning.

My final decision

For these reasons, my final decision is that I do not uphold Mr J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 17 December 2024.

Mike Ingram

Ombudsman