

## The complaint

Mr M complains that Clydesdale Bank plc, trading as Virgin Money, won't refund to him the money that he paid for an introductory membership of a holiday club. His wife is also involved in his complaint and he's being represented by a claims management company.

## What happened

I issued a provisional decision on this complaint in October 2023 in which I described what had happened as follows:

*"Mr M and his wife applied for an introductory membership of a holiday club in July 2016 and they entered into a purchase agreement with a holiday company. The purchase price for the introductory membership was £3,700 and Mr M paid €1,800 of that amount using his Virgin Money credit card. The amount charged to his Virgin Money credit card account was £1,512.23.*

*Mr M's representative, on behalf of Mr M, made a claim to Virgin Money in July 2019 under section 75 of the Consumer Credit Act 1974. It said that the holiday company was in breach of contract by misrepresenting the contract to Mr M and his wife and breaching the EU timeshare directive. It said that Mr M and his wife were entitled to seek recompense of all monies paid on their Virgin Money credit card, namely the sum of £3,700, together with interest.*

*Virgin Money upheld Mr M's claim and refunded £1,512.23 to him in May 2020. Mr M's representative wrote to Virgin Money and said that Mr M had only been reimbursed for the deposit paid and asked it to clarify its reasoning and provide its final response. No response was received so Mr M's representative, on behalf of Mr M, submitted a complaint to this service in September 2020. It enclosed Mr M's complaint form which was dated in August 2019.*

*Our investigator recommended that Mr M's complaint should be upheld. He said that Virgin Money had already accepted and paid Mr M's claim but he said that that the total cost of the introductory membership was £3,700 so he didn't think that it had settled the claim fairly. He recommended that Virgin Money should pay Mr M the shortfall in his claim settlement so as to cover the total cost of the purchase agreement.*

*Virgin Money has asked for this complaint to be considered by an ombudsman. It says that it's unable to understand why the transaction amount of £1,512.23 was settled as the case was being investigated in May 2020 and then settled for that amount shortly after and it sent a letter to Mr M. It says that considering the evidence it has, it wouldn't agree to settle for the full £3,700 as Mr M did use the service for two years of holidays in 2017 and 2018 and it has no proof of how the remaining balance was paid. It says that it believes £1,512.23 to be a fair settlement. Mr M's representative says that the whole contract purchased by Mr M and his wife was £4,850.03 and his claim is for the full amount".*

I said in my provisional decision: *"I consider that Mr M's complaint shouldn't be upheld for these reasons:*

- *Mr M's claim was made under section 75 which gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier (provided that certain criteria set out in that section are met);*
- *Mr M's claim was that the holiday company was in breach of contract by misrepresenting the purchase agreement to Mr M and his wife and breaching the EU timeshare directive;*
- *I'm not determining the outcome of that claim in this decision as only a court would be able to do that but I'm considering whether or not Virgin Money's response to Mr M's claim was fair and reasonable in the circumstances;*
- *Virgin Money upheld Mr M's claim and refunded to him the £1,512.23 that he'd paid in July 2016 using his Virgin Money credit card;*
- *a complaint was then made to this service in September 2020 and Mr M's complaint form says that the holiday company was in breach of the contract by misrepresenting the contract to Mr M and his wife and breaching the EU timeshare directive – but there was no reference in the complaint to the refund that had already been made by Virgin Money;*
- *Mr M's representative's letter to Virgin Money in July 2019 describes the misrepresentations that it says were made to Mr M and his wife, including that:*
  - *they were told that they were purchasing three holidays with the holiday company but the product purchased didn't give them sufficient points to enable them to book a two bedroomed apartment as experienced by them in their first holiday for three years;*
  - *they were advised that they could trade the product through an exchange program but weren't advised that there would be extra fees to be paid to the exchange provider or that there would be significant restrictions on the resorts and dates that they could book; and*
  - *they were advised that it wasn't possible to accommodate them for their 2019 holiday in the complex that they'd purchased which was untrue, and a search had shown that the accommodation was available for approximately the same date;*
- *the price payable under the purchase agreement was £3,700 and Mr M's representative's July 2019 letter said that Mr M's claim was for £3,700, with interest, but in May 2022 it said that the whole contract purchased by Mr M and his wife was £4,850.03 and that his claim was for the full amount;*
- *neither Mr M nor his representative has provided an explanation as to why the contract price was £4,850.03 or evidence to show the total amount paid by Mr M – the only evidence that I've seen is a credit card receipt for a payment of €1,800 made by Mr M in July 2016 and an extract from his credit card account from July 2016 which shows a payment of that amount and a corresponding charge to his account of £1,512.23;*
- *enclosed with Mr M's representative's July 2019 letter was an e-mail from Mr M's wife to the holiday company about some issues with Mr M and his wife's holiday in July 2018, including some photos showing the condition of the accommodation that was provided to them;*
- *Mr M's representative has provided copies of the following documents that Mr M*

*and his wife signed with the holiday company in July 2016 - the purchase agreement, a statement of facts, and a premium club membership agreement (the purchase price payable under the premium club membership agreement was £1,500 and the holiday company confirmed in a letter to them that the £1,500 would be deducted from their final payment);*

- it's clear from Mr M's representative's July 2019 letter that Mr M and his wife enjoyed the holiday that they took in 2017 and that, though there were issues with the accommodation that was provided to them in July 2018, they were then moved to other accommodation – the letter describes the issues that they then had with booking a holiday for 2019;*
- Virgin Money says that Mr M and his wife did use the service for two years of holidays in 2017 and 2018 and that it has no proof of how the remaining balance was paid so it believes £1,512.23 to be a fair settlement;*
- Virgin Money's response to the claim that was made to it was to refund £1,512.23 to Mr M – I've seen no evidence to show that it provided a final response letter or other explanation of its refund to him and I consider that it should have done so – but I consider that it was fair and reasonable in these circumstances for it have refunded £1,512.23 to Mr M and I'm not persuaded that it should have refunded to Mr M the £3,700 that he'd claimed at that time or the higher amount to which his representative referred in May 2022; and*
- I sympathise with Mr M and his wife for the issues that they had with their introductory membership but I find that the refund that Virgin Money made to Mr M in September 2020 was a fair and reasonable response to the claim that had been made to it so I find that it wouldn't be fair or reasonable in these circumstances for me to require Virgin Money to pay him any further amount or to take any other action in response to his complaint”.*

Subject to any further comments or evidence that I received from any of Mr M, his representative and Virgin Money, my provisional decision was that I didn't intend to uphold this complaint. Virgin Money says that it has nothing further to add and neither Mr M nor his representative has responded to my provisional 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.

As neither Mr M nor his representative has responded to my provisional decision and Virgin Money says that it has nothing further to add, I see no reason to change the outcome that I set out in my provisional decision.

### **My final decision**

My decision is that I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 January 2024.

Jarrold Hastings  
**Ombudsman**