

## **The complaint**

Miss B complains about how Sainsbury's Bank Plc ('SB') responded to a claim she made regarding holiday accommodation bought using her credit card.

## **What happened**

In summary, Miss B paid for a holiday villa for her and a group including family members. She used her SB credit card to pay for it. Miss B had not booked a specific villa but was allocated a certain class of villa on arrival. However, the villa was not as she expected. It didn't come equipped with the facilities she says she requested, and the condition of the accommodation was extremely poor and unsanitary. Miss B and her group ended up leaving the villa after staying for just one night.

Miss B was unable to agree a resolution with the supplier of the villa – it offered her £250 compensation but she was not satisfied with this so raised a claim with SB.

SB considered the claim under Section 75 of the Consumer Credit Act 1974 ('Section 75') but declined to do anything more (except offer £50 compensation for the way it handled the claim). Miss B was unhappy with this and referred the matter to our service.

Our investigator looked at the issues. He was satisfied that Miss B had a valid Section 75 claim and the condition of the villa was poor enough to constitute a breach of contract by the supplier. He didn't think that the supplier's offer to clean/fix the problems was sufficient and he thought a refund (minus a reasonable deduction for the night Miss B stayed) was fair and reasonable.

Miss B agreed with the outcome, but SB did not. In summary, it says:

- as the villa was provided as advertised there was no obvious breach of contract or misrepresentation
- Miss B should have allowed the supplier the opportunity to remedy the issues as this was offered
- it would have been more inconvenient to move the family than allow the supplier to clean the villa
- the supplier has not admitted the property was not fit for purpose or clean enough and confirmed the property passed a full check before the keys were handed over
- the initial complaint the consumer made was about the lack of a games room and spa bath and when it was confirmed they did not book this the concern changed to the cleanliness of the property – which suggests there was a degree of buyer's remorse
- £250 offered by the supplier is fair compensation and there has been no proof of breach of contract or misrepresentation

## 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.

In order to decide what is fair and reasonable in the circumstances I consider the relevant law. In this case, Section 75 is relevant, because depending on certain criteria it makes SB responsible for breach of contract or misrepresentation in relation to goods or services Miss B purchased using her credit card.

SB initially questioned whether the correct 'debtor-creditor-supplier' agreement was in place for Miss B to have a valid claim against it in relation to the total cost of the booking. It points to the fact that several guests stayed in the villa who might have paid Miss B for the holiday and suggested Miss B cannot claim back these amounts.

I have looked at the contractual relationship here, including the booking paperwork and terms and conditions with the supplier. I am satisfied that Miss B as the lead booking party made a contractual agreement with the supplier that it would provide the accommodation as specified. I note that in the event of problems or changes the contract allows Miss B certain remedies including a full refund. Furthermore, I do not see anything in the agreement that would cause me to conclude Miss B is prevented from raising a claim for breach of contract in respect of the cost of the whole booking. So I disagree with SB that the requirements of Section 75 prevent Miss B from potentially recovering the full price paid for the holiday. What is more – the arrangements she has with individuals for repayment are between her and those individuals – so I don't think that impacts her claim against SB here.

I am satisfied the criteria for a valid Section 75 claim against SB are in place. And although I am not deciding the Section 75 claim, I am considering whether SB acted fairly in the circumstances in light of any breach of contract or misrepresentation by the supplier. In order to determine whether SB acted fairly I have had regard to the Consumer Rights Act 2015 (the 'CRA').

The CRA implies a term into a consumer contract such as this one that the service will be provided with reasonable 'care and skill'. This standard isn't defined exactly – but is generally held to mean that a service is carried out according to standards expected in that industry/sector taking into account relevant factors such as the price paid for the service and the description.

I have noted the information Miss B has provided about the condition of the villa when they arrived. In her detailed submissions Miss B has explained that the villa was dirty and unsanitary. In regard to this she has mentioned several things including the following:

- stained and dirty bedding
- cockroaches in the washing machine
- damp and mould in the rooms (Miss B points to the existence of dehumidifiers and air fresheners in each room as indicative of a wider damp issue)
- filthy and damp outdoor furniture and an unclean pool
- mould and dirt on and around the pool screen
- bathing and toilet facilities were 'rancid' with mould, hair and dirt with blocked drains and brown water
- 'disgusting' oven, fridge, and kitchen in general – 'none of it usable'

The type of villa that was supplied is described as being 'humbly decorated' but (as Miss B has said) example shots on the website show these to be clean and well presented.

Regardless of the photos there is also a reasonable expectation that accommodation will be sufficiently clean and sanitary as a very basic requirement. Miss B's testimony that the villa fell well below this basic standard is credible. However, when combined with the photos she has taken it becomes particularly compelling.

The photos illustrate what does appear to be a mould and damp issue – showing what seems like visible mould on the walls and skirting and several air fresheners dotted about which appear likely to be linked to this issue. Outside the pool cover and area around it looks extremely mouldy and the pool furniture looks to be stained with mould.

The photos of the bathroom show what look to be extremely unhygienic and dirty conditions – with visible hair in the bath and a soiled area near the toilet. There are also photos of the hob and oven that look extremely dirty and unappealing. And a photo of what appears to be the fridge water dispenser completely covered in debris, dirt and limescale.

In addition to the above I can also see photos of other damage to the property including broken window blinds and what appear to be exposed/loose electrical fittings - which no doubt would create safety concerns. There is also a photo showing what appears to be a blocked bath.

Because of the dirty and apparently unsanitary condition the villa was supplied in it seems more likely than not the supplier failed to act with reasonable care and skill in its provision of the accommodation service. Therefore, breaching the term implied by the CRA in the supply contract. So contrary to what SB has said here – there has been a breach of contract.

I note that Miss B felt so strongly about the condition of the villa she chose to leave with her group after one night. Considering the photos I have seen I don't think this was an unreasonable choice to make and goes some way to illustrate just how poor the condition of the villa was.

SB has indicated that Miss B had buyers' remorse because the villa she was allocated did not have the facilities she was hoping it would have (such as Wi-Fi and a games room). However, I don't see how that detracts from what the testimony and photos show to be a clear breach of contract in relation to the condition of the villa. I know the supplier said they checked over the villa and it passed the initial checks– but I think Miss B's credible photos clearly show the poor condition on arrival. And although Miss B didn't raise the cleanliness issues straight away she did so promptly and I think it would have reasonably taken a little time to fully realise the extent of these issues. Nor does it change the condition of the villa which has been credibly illustrated here.

So I disagree with SB that there is no breach of contract here. So I turn to remedies.

SB maintains that the supplier should have been given the opportunity to clean the villa and resolve the issues raised. I note that in the CRA 'repeat performance' is an available remedy where a service has not been provided with reasonable skill and care. However, repeat performance must be provided 'within a reasonable time and without significant inconvenience to the consumer'. Otherwise the customer might be entitled to a price reduction instead.

From seeing the extent of the issues with the villa particularly with the apparent damp/mould, drainage, and electrical sockets – I don't think this was a basic clean up that could be completed in a few hours nor one that you would want to be around while on holiday. I think it likely would have caused significant inconvenience to the family and certainly more than simply picking them up and taking them to alternative accommodation of a similar class. I don't think that would have been difficult or more inconvenient as SB has implied it would be.

I think that £250 is not adequate compensation for what happened here. Nor was it acceptable to offer Miss B alternative accommodation at an increased cost. I think that the group acted reasonably in moving to a different venue when they realised the extent of the issues with the villa. So I think Miss B should get refunded for the time the villa wasn't in use by the group. I think it is arguable a full refund is in order here – however, Miss B and her family stayed for a night and Miss B appears willing to pay for this. So all in all I think a price reduction reflecting a refund for 13 nights is a fair way of resolving things.

### **Putting things right**

Miss B should get a partial refund to reflect payment for just a one-night stay at the villa. I understand that 14 nights' accommodation cost her £2,338.28 so on a pro rata basis each night equates to £167.05. Therefore, with one-night deducted Miss B should get back £2,171.23.

Miss B had to pay out for alternative accommodation and has received little benefit for the payment relating to the villa. Here I consider it fair and reasonable to refund her credit card account for £2,171.23 of the original transaction – removing any associated interest and charges relating to this amount. If the re-working results in a credit balance then this should be refunded to Miss B with 8% simple yearly interest added from the date of said credit balance to the date of settlement.

I also note that SB offered Miss B £50 compensation for the time it took to answer her claim in full (it took several months). The investigator considered this to be a fair offer. I think all parties are happy with this – overall it seems fair - SB should pay this as well.

### **My final decision**

I uphold this complaint and direct Sainsbury's Bank Plc to pay Miss B a partial refund of £2,171.23 in line with my instructions above. It should also pay her the £50 compensation it offered for the way it handled her claim.

If SB consider it necessary to deduct tax from the interest part of the award it should provide Miss B with a certificate of tax deduction so she may, if appropriate, claim a refund of said tax from HMRC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 16 September 2022.

Mark Lancod  
**Ombudsman**