

## **The complaint**

Mr M complains The Royal Bank of Scotland Plc (“RBS”) hasn’t dealt fairly with a claim he raised under section 75 of the Consumer Credit Act 1974 (“CCA”).

## **What happened**

I issued a provisional decision on Mr M’s complaint on 26 July 2024, in which I outlined the background to the case, and my provisional findings on it. A copy of that provisional decision is appended to, and should be treated as forming a part of, this final decision.

It’s therefore not necessary for me to go into detail again about what happened, but in brief summary:

- Mr M used his RBS credit card to pay for a package holiday with a well-known tour operator (“T”) in Mallorca, for himself and immediate family members, costing a total of £2,971.80.
- Mr M approached RBS with a section 75 claim because two major things went wrong with the holiday:
  - There were noisy and disruptive building works going on across the road from the balcony of his hotel room.
  - His wife was not given the appropriate special assistance at Mallorca airport on the return journey, and was left in a wheelchair at the departure gate by airport staff.
- RBS declined Mr M’s claim because it considered he had already been made a fair offer by T to remedy any breach of contract it might have committed.

In my provisional decision I made the following key findings:

- The effect of section 75 here was to allow Mr M to hold RBS liable for any breach of contract or misrepresentation by T in respect of the package holiday. Because T was the organiser of the package, it was responsible to Mr M under the relevant law for the performance of the accommodation and transport services, as well as its own holiday arranging services.
- T had not been legally responsible for the provision of special assistance at Mallorca airport – that was the airport’s responsibility. I thought the evidence suggested the problems had *not* been caused by a failure of T to pass on the relevant information to the airline or airport.
- T had a contractual obligation to exercise reasonable care and skill in making Mr M’s holiday arrangements. This included meeting the requirements of an industry code, which said T must notify customers and offer alternative accommodation as soon as it became aware of major building works at or near the accommodation.

- There had been major building works going on across the road from the hotel, and I thought T should have been aware of these well before the dates of Mr M's holiday. Its failure to notify Mr M was a failure to exercise reasonable care and skill, and a breach of contract for which RBS could be found liable under section 75 of the CCA.
- While I thought the disruption caused by the construction works was significant and deserving of more than just a modest price reduction, I noted a £950 credit T had given Mr M represented 55% off the price of the accommodation, and I thought this represented a fair settlement in the circumstances.
- I thought RBS's decision on Mr M's section 75 claim had therefore not been wrong.

I asked the parties to the complaint to let me have any further submissions before 9 August 2024. At the time of writing, there have been no further submissions from either party, or requests for more time, and the deadline has now passed. The case has therefore been returned to me to decide.

### **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 party to the complaint has put forward any further submissions for me to consider, and upon a further review of the case, I see no reason to depart from the findings I reached in my provisional decision.

It follows that I find RBS's decision on Mr M's section 75 claim was fair, for the same reasons I explained in my provisional decision.

### **My final decision**

For the reasons summarised above, and explained in more detail in my appended provisional decision, I do not 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 6 September 2024.

Will Culley  
**Ombudsman**

## **COPY OF PROVISIONAL DECISION**

I've considered the relevant information about this complaint.

Having done so, I've arrived at the same overall conclusions as our investigator, but I've explained my reasons in more detail and, in the interests of procedural fairness, it would be right to give both parties to the complaint an opportunity to provide further comment before I make my decision final.

I'll look at any more comments and evidence that I get before 9 August 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.

### **The complaint**

Mr M complains The Royal Bank of Scotland Plc ("RBS") hasn't dealt fairly with a claim he raised under section 75 of the Consumer Credit Act 1974 ("CCA").

### **What happened**

Mr M used his RBS credit card in February 2023 to pay for a package holiday with a well-known tour operator ("T") to Mallorca, from 6 May 2023 to 13 May 2023. The holiday was for Mr M, his wife, and two other immediate family members. Mr M has said his wife was recovering from intensive cancer treatment, and so it was important for him and his family to have a relaxing time.

Included in the price of £2,971.80, were return flights from an airport in the UK to Palma de Mallorca with a budget airline, transfers, and two twin rooms with a balcony and sea view, on a half-board basis, at a hotel Mr M had stayed at on several occasions previously. Mrs M had reduced mobility, and so Mr M made a request to T for special assistance to be provided to her. This was supported by a letter from a doctor which stated that Mrs M would "require assistance at the airport" and was "unable to climb the steps to board the coach transfers" and so would need a taxi between the airport and hotel.

It appears there was no problem with the outbound travel arrangements, but problems emerged the shortly after Mr M and his party arrived at the hotel, when they were disturbed by the sound of construction works. It turned out that the hotel was constructing a new beach club across the road from Mr M's hotel room, and Mr M says loud and unpleasant noises, and the dust associated with the construction, continued all day from early in the morning throughout their stay. Mr M found this especially unsatisfactory due to his wife's need to rest and recuperate.

Mr M says he raised concerns with the hotel manager, but they didn't offer any solutions. Following Mr M's complaints to the hotel, a rep of T visited on 12 May 2023, the day before Mr M's party was due to depart, but this was too late to achieve anything.

Mr M says there were then problems at Palma de Mallorca airport on the way back, and the special assistance he'd arranged wasn't provided as expected. Mr M says the airport transported Mrs M to the departure gate in a wheelchair, where she was abandoned and no further assistance was provided. He says he complained to the airline cabin crew, who apologised and arranged for the captain to log the incident.

After returning home, Mr M complained to T about his holiday experience. He asked for a full refund and a free holiday. We don't have a full copy of T's response to the complaint, but it

offered Mr M the option of an £800 cash refund, or a £950 voucher. Mr M accepted the voucher, but emphasised to T that it had not responded to his complaint about the failure of the special assistance at the airport, and he expected a further response and compensation in respect of this. I understand from Mr M that he didn't receive any further response or offers from T.

Mr M then contacted RBS for assistance in claiming further compensation under section 75 of the CCA. The bank looked into the claim and decided that T had already made a fair offer to Mr M, so it declined his claim. Mr M complained but the bank stood by its decision, so he referred the matter to the Financial Ombudsman Service for an independent assessment.

One of our investigators looked into the matter. She noted Mr M would have been entitled to a price reduction from T in respect of parts of the holiday contract which hadn't been performed properly. Looking at what had been included in the price of the holiday, against the things which had gone wrong, our investigator thought the offers made by T represented a fair price reduction in the circumstances, so she thought RBS had treated Mr M fairly in declining his claim.

Mr M disagreed and asked for his case to be appealed, so the matter has been passed to me to decide.

### **What I've provisionally decided – and why**

I've considered all the available evidence and arguments to decide provisionally what's fair and reasonable in the circumstances of this complaint.

When a person purchases goods or services using a credit card, section 75 of the CCA allows them, subject to certain conditions being met, to hold their credit card issuer liable for any breach of contract or misrepresentation by the supplier of the goods or services.

Mr M was the lead passenger on the package holiday booking with T. According to the package holiday contract, this means he was arranging for himself and all members of his party to enter into the contract with T for the holiday. The contract states that T will only deal with the lead passenger, and so I think Mr M is able to claim against T (and – due to section 75 of the CCA – RBS) in respect of himself and the rest of his party, as opposed to simply his own proportion of the holiday.

A misrepresentation, for the purposes of this case, would be a false statement of fact made by T to Mr M, and which he relied on when booking the holiday on the terms he did.

A breach of contract occurs when one party to a contract fails to honour its contractual obligations to the other. Such obligations may be written into the contract, or they may be treated as included by the operation of certain laws. These terms are sometimes referred to as "implied terms".

In this case Mr M bought a package holiday, which means the Package Travel and Linked Travel Arrangements Regulations 2018 ("PTRs") are applicable to the contract and cause certain terms to be treated as included. Importantly, the PTRs make T responsible contractually for any failing by the hotel, airline or transfer operator to carry out the various parts of the contract correctly. The PTRs also require T to provide a "proportionate price reduction" where parts of the holiday contract are not performed correctly, and "appropriate compensation for any damage".

It's worth noting that the PTRs also say that a traveller must tell their package organiser i.e. T, about any problems "without undue delay". I'll return to the importance of this later.

Another law which caused terms to be included in Mr M's contract with T is the Consumer Rights Act 2015 ("CRA"). The CRA makes it a term of any contract for services, that the services will be performed with "reasonable care and skill". What this has generally been held to mean is that the services should be performed with the level of care and skill to be expected of a competent practitioner of those kinds of services. What is meant by services here would include the performance of the flight and the airport transfers, and the provision of the accommodation, but also the service provided by T in making the holiday arrangements.

It's not been seriously argued that the holiday was misrepresented, so I have focused on the matter of breach of contract. There were two main things which went wrong – the problems caused by construction works, and the failure to provide the required special assistance for the return flight at Palma de Mallorca airport. I will analyse the latter problem first.

#### *Failure to provide special assistance*

Having considered the relevant regulations and laws regarding air travel, I do not think that the provision of special assistance at Palma de Mallorca airport was legally the responsibility of either the airline or T. Up until a person has been boarded onto an aircraft, it is the airport which has the legal responsibility for any special assistance they may need.<sup>1</sup> It's Mr M's case that airport staff took Mrs M to the gate and left her there, so it would appear that the problems arose at a point where the airport was legally responsible. I have not been made aware of any problems that occurred *after* Mrs M boarded the flight and which would therefore have been the airline's (and, by virtue of the PTRs, T's) responsibility.

I've thought about whether the *reason* why incomplete assistance was given at the airport, was because of a failure by T to pass on the information. I think this is unlikely however. Firstly, it appears the airport in the UK provided the right level of assistance to Mrs M, which suggests correct information was conveyed by T to the airline and airport. Secondly, the Spanish airport appears to have known Mrs M required assistance, which indicates T had made them aware of this. Unfortunately, the wrong type of assistance was then provided, but there's no evidence this was due to some failing on T's part.

Mr M hasn't explained what happened after Mrs M was left at the departure gate, but I acknowledge that the failure to provide the level of assistance his wife needed, will have had the potential to be very frustrating and embarrassing. In my view however, it's not something which RBS is liable for under section 75 of the CCA.

#### *Construction works near the hotel*

As a package holiday organiser, T is a subscriber to an industry code called the ABTA Code of Conduct<sup>2</sup>, which sets out certain standards organisers are expected to adhere to. I think it would be fair to conclude that a failure to adhere to these standards would constitute a lack of reasonable care and skill on the part of an organiser like T.

On the subject of building works, the code makes it clear that organisers have a responsibility to inform customers of serious building works at or near their accommodation. While the code seems to suggest that only works which are known about at the time of booking need to be mentioned to customers, further advice on ABTA's website clarifies that organisers must also notify people with existing bookings and offer them alternative

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<sup>1</sup> The Civil Aviation Authority has information about this here: <https://www.caa.co.uk/passengers-and-public/prm/special-assistance-problems/>

<sup>2</sup> [https://www.abta.com/sites/default/files/2024-07/Code%20of%20Conduct%20Guidance%20Jul%202024\\_.pdf](https://www.abta.com/sites/default/files/2024-07/Code%20of%20Conduct%20Guidance%20Jul%202024_.pdf) [accessed 25 July 2024]

accommodation, if they subsequently become aware of relevant building works.<sup>3</sup>

I've seen evidence from Mr M that significant construction works were going on just across the road from the hotel, and could be seen and heard from his balcony. In the videos I've watched, large cranes obscure part of the view of the sea, and the sounds of power tools, hammering, heavy machinery and the shouts of construction workers can be heard. I've no doubt that this sort of activity would have a negative impact on a person's holiday, especially where they planned to stay largely at or around the hotel due to reduced mobility (as Mr M says was the case for his family).

Evidence from a local travel writer indicates these works had been ongoing from at least as early as February 2023. It's possible T might not have been aware of the works at the time of Mr M's booking, but I think it certainly ought to have known not long after this, and indeed the ABTA code notes that T had a responsibility to have systems in place to find out about such works.

I think T's failure to notify Mr M of the major construction works constituted a failure to provide the service of organising and arranging the holiday with reasonable care and skill. This is a breach of contract for which Mr M could also hold RBS liable under section 75 of the CCA.

This brings me on to the question of what fair redress would look like in Mr M's case.

*Has Mr M already been adequately compensated for the breach of contract?*

The PTRs say T should have offered Mr M a price reduction and/or appropriate compensation. There are various factors which have been important for me to consider when determining what level of price reduction or compensation would be fair overall.

Firstly, I'm unable to factor in the problems with the special assistance at Palma de Mallorca airport, for the reasons already explained above.

Regarding the failure to notify Mr M of the construction work adjacent to the hotel, I think the works were serious enough to have a significant impact on the quality of the accommodation Mr M and his family stayed in. So I don't think a small price reduction or compensation would be reasonable in the circumstances.

On the other hand, Mr M does not appear to have informed T (as required under the PTRs, and under his contract with T) about his unhappiness with the situation until the day before he was due to check out of the hotel. While there may not have been a rep at the hotel, there were other ways of contacting T which were set out in the booking information. So I think to some extent Mr M did not mitigate the situation and that is something which needs to be taken into account. It's possible T would have come up with a solution – such as putting Mr M and his family in a different hotel – had he made it aware he was unhappy.

I've also needed to take into account the fact that Mr M and his family's flights and transfers were supplied as agreed – the problem was chiefly with the hotel.

As compensation for the problems with the holiday, Mr M was offered a £950 voucher from T, which he accepted on the condition T looked into the special assistance problems further and increased their offer accordingly.

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<sup>3</sup> <https://www.abta.com/help-and-complaints/frequently-asked-questions/ive-just-been-told-building-works-are-taking-place> [accessed 25 July 2024]

I've thought about how much this £950 represented as a proportion of the value of the accommodation, which was the part of the holiday which was significantly impacted by T's failure to exercise reasonable care and skill.

As part of doing this, I checked how much the same class of room, at the same hotel, on the same week of May, and on the same half-board basis, would cost in 2025. The hotel's official price was the equivalent of £123 per room, per night. I think it's fair to assume that the price would have been similar for Mr M's booking, and this means each room would have cost £861, with the total cost of accommodation being £1,722.

This means the £950 voucher represented a price reduction (or compensation) equal to 55% of the value of the accommodation. Like our investigator, I think this is a fair amount of compensation when taking a broad, holistic view of the problems experienced against the cost of the holiday.

In light of this, it follows that I don't think RBS was wrong to have declined to provide any further redress when responding to Mr M's section 75 claim. I am not minded to require the bank to take any further action with respect to Mr M's complaint.

### **My provisional decision**

For the reasons explained above, I am not minded to uphold Mr M's complaint. I now invite all parties to the complaint to let me have any new submissions they would like me to consider, before 9 August 2024. I will then review the case again.

Will Culley  
**Ombudsman**