

complaint

Mr W complains Barclays Bank UK PLC hasn't refunded a payment he made for a holiday.

background

Mr W used his Barclays credit card to pay for an all-inclusive holiday for him and two of his relatives. The total cost was around £2,400. When they arrived at their hotel they discovered the hotel didn't serve any alcoholic drinks, soft drinks or snacks. Mr W says he complained and asked to be moved to another hotel which did offer these services.

Mr W says an alternative hotel couldn't be provided. For this reason, Mr W and his relatives decided to pay for flights to return home the day after arriving. They complained to the travel agent who sold them the holiday package and received a refund of around £1,100.

Mr W felt he should be entitled to a full refund so he raised a claim with Barclays under Section 75 of the Consumer Credit Act 1974 ("S75"). Barclays declined his claim. It initially said Mr W hadn't paid for the holiday, but later agreed he had. It said the claim couldn't succeed because it was Mr W's relative that had the contract with the travel agent.

I sent Mr W and Barclays my provisional decision on 5 July 2019 explaining why I didn't think the complaint should be upheld. In summary, I said:

- My role wasn't to decide Barclays' liability under S75, but to decide what was fair and reasonable. In doing so, I'd taken into account the relevant law which included S75 and the Package Travel and Linked Travel Arrangements Regulations 2018.
- I thought there was a debtor-creditor-supplier arrangement between Mr W, the holiday company and Barclays, in order for Mr W to make a S75 claim. This was because Mr W had paid the holiday company directly using his Barclays credit card and he was listed as a passenger on the booking confirmation. Although he wasn't the lead passenger, the very nature of these types of bookings was that only one person could ever be the lead passenger. I didn't think this meant only the lead passenger had a contract with the holiday company – Mr W did too.
- There was no evidence to demonstrate how the holiday company had advertised the "all inclusive" holiday at the time Mr W booked it. I said that it was reasonable to expect "all inclusive" to include at least some alcoholic and soft drinks and snacks. But I was satisfied, on balance, that it wasn't made clear to Mr W prior to booking that some of those things weren't available.
- It wasn't in dispute that alcohol wasn't included. It appeared that some soft drinks were provided but I thought the selection was very limited compared to what a reasonable person might expect. I wasn't however persuaded that snacks weren't available, particularly as Mr W didn't raise this in his initial complaint letter to the holiday company.
- Overall I was satisfied that there had been a breach of contract as the holiday wasn't what a reasonable person would expect from an "all inclusive" holiday – due to the lack of alcoholic and limited soft drinks.
- But despite this I didn't think Barclays needed to give any refund to Mr W. This was because I thought Mr W had already received a fair refund from the holiday company. And I didn't think he did enough to try and mitigate his losses.
- This was because Mr W was at the resort for at most around 24 hours before choosing to fly home. I didn't think he gave the holiday company enough time to try and resolve the situation for him – such as moving him to an alternative resort. He

had said he tried calling the holiday company and was promised a call back. He says they never called back. But I couldn't see that Mr W had tried to call them back either.

- By choosing to fly home so soon, I thought the holiday company was prevented from having a reasonable period of time to try and find a solution. I wasn't persuaded Mr W's actions were reasonable in the circumstances.
- I agreed it would have been disappointing for Mr W not to have alcoholic and soft drinks and snacks. But I wasn't persuaded this was the only reason they chose to book the holiday. They still received the flights and accommodation they paid for. He could still have enjoyed the other facilities at the resort and might have been moved to a different resort had he waited a more reasonable period of time.
- I thought the refund from the holiday company of almost half of what he paid was fair given all the circumstances. For that reason I didn't think it would be fair to say Barclays ought to refund Mr W anything further on top of that.

Barclays agreed with my provisional decision and had nothing further to add.

Mr W didn't agree. In summary he said he didn't think I'd reviewed all of the information thoroughly as he couldn't understand why I would think he received an "all inclusive" holiday. He said he didn't get what he paid for so how could it be fair he didn't get all of his money back. Mr W said he made 14 calls in the 24 hours he was at the resort to try and get the issue resolved.

my findings

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 assure Mr W that I have carefully considered everything he's said and provided. And I agreed with him in my provisional decision that the holiday he got wasn't what a reasonable person would describe as "all inclusive". But that doesn't mean it's automatically fair that he should get a full refund.

I've explained this is because the elements of the "all inclusive" that were missing were only a fraction of the overall cost he paid for the holiday. A large part of the cost was to pay for the flights and accommodation – and Mr W did receive that. As I explained in my provisional decision, Mr W could have still used the other facilities at the hotel whilst he was waiting for a more permanent solution to his concerns.

I've also thought about whether I think he gave the holiday company a reasonable amount of time to resolve the situation. I appreciate Mr W feels very strongly about this and I can also understand why he might feel 24 hours was a reasonable period of time. But having thought about all the wider circumstances – such as the significance of the breach of contract compared to the overall cost of the holiday – I don't think 24 hours was reasonable.

Mr W says he made 14 different calls to try and resolve the issue. And while I don't doubt that, it doesn't appear these 14 calls were made to the holiday company. I say this because Mr W's original complaint letter to the holiday company only mentions him making one call. I think if he'd made 14 calls to them (or more than one) I would have expected him to have mentioned it. Particularly because his complaint letter was sent two days after arriving home. So for that reason I'm still not persuaded that he gave the holiday company a reasonable period of time to try and resolve his concerns.

I realise this will be very disappointing for Mr W, but taking everything into account, I think the refund he's already received from the holiday company is fair compensation for the breach of contract. For that reason I don't think it would be fair to direct Barclays to pay him anything further.

my final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 29 August 2019.

Tero Hiltunen
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