

complaint

Mrs C complains that HSBC UK Bank Plc refused to refund the cost of her holiday when she raised a claim under section 75 of the Consumer Credit Act 1974.

background

In 2018 Mrs C paid for a holiday using her HSBC credit card. She later complained about a number of problems with the holiday, which were:

- The hotel was advertised as being a ten minute stroll from the nearest village, but it was further away and could only be reached by taxi,
- The nearest town was advertised as being 5km away, but it was further than that,
- The local beach was advertised as sandy, but it was pebbly,
- The bar was so noisy that it kept her awake at night,
- The balcony and hot tub did not offer sufficient privacy,
- The balcony overlooked a weed garden,
- The service in the restaurant was poor,
- The minibar was only refilled every other day, and she had to pay for the drinks,
- On return to the UK there was no bus to collect them at the airport.

The travel company refunded Mrs C €80 for her taxi fares, and sent her a voucher for £370 off her next holiday booking. But she refused the voucher, and asked HSBC for a full refund of her entire holiday instead. But HSBC refused, so she brought this complaint to our Service.

Our adjudicator did not uphold most of this complaint. He agreed that the hotel was further from the village than advertised and he agreed that the beach had not been sandy. He recommended that HSBC refund ten percent of the total cost of the holiday for those issues, minus the €80 already refunded (which he assessed was worth £75). But he did not uphold the rest of this complaint.

HSBC agreed with the adjudicator's recommendation, but Mrs C did not. She asked for an ombudsman's decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I agree with the adjudicator's opinion, and for broadly the same reasons. I will explain why.

Section 75 makes HSBC, as the provider of credit, jointly and severally liable for a breach of contract or a misrepresentation by the travel agency Mrs C paid with her credit card. Another law makes the travel agency liable for a breach of contract or misrepresentation by the hotel or by the airline, if this was a package holiday. No-one has suggested that this was not a package holiday, so I have assumed that it was. HSBC has agreed to refund Mrs C. But the travel agency is not responsible for providing a bus at the UK airport, and no law makes the travel agency liable for anything the airport did or failed to do. So section 75 does not extend to that part of this complaint.

The essence of this complaint is that HSBC wrongly declined Mrs C's claim for a refund under section 75. I uphold that complaint in part.

There is clear evidence that the village was more than a ten minute walk away, although it is certainly not a 15-minute taxi journey as Mrs C suggested. The centre of the village is a 21-minute walk away, according to Google Maps. So I uphold that part of her complaint. The town which was advertised as being 5km away is actually 7km away, or a 12-minute taxi ride, so I don't uphold Mrs C's complaint about that issue.

The beach was advertised as sandy, but it is not in dispute that it was pebbly, so I uphold that part of this complaint. I think that ten percent off the total cost of the holiday, minus £75 for the refund already paid, is fair compensation for those two issues.

I do not uphold the rest of this complaint.

I would not expect the drinks in the hotel minibar to be free. If it was not refilled every day then I'm sure that room service would have brought whatever was needed, so I don't think that amounts to a breach of contract by the hotel. I don't think the hotel can be liable for noise made by the other guests, so if the bar was noisy, then that can't be helped. I wouldn't expect a balcony or a hot tub, which are outdoors, to be private. Nor were they advertised as being private. The view from the balcony was not described in the brochure, so I don't think the view Mrs C had amounts to a breach of contract.

Mrs C's description of the service in the hotel restaurant, which is not in dispute, does sound like rather poor service. But I don't think every instance of poor service will necessarily amount to a breach of contract. There is no evidence that Mrs C ate elsewhere during the week-long holiday, which I would have expected her to do if the hotel's restaurant was consistently poor. There were other restaurants in the village and in the town, as well as another hotel next door. So on the balance of probabilities, I don't think Mrs C's experience in the hotel restaurant amounts to a breach of contract by the hotel or by the travel agency.

It follows that I agree with HSBC's decision to reject Mrs C's claim under section 75, except in respect of the two issues described above – the beach and the distance from the village. And I agree with the adjudicator's suggested remedy.

Before I conclude, I should explain why I am not requiring HSBC to refund the holiday in full. The two issues I have agreed Mrs C should be refunded for are misrepresentations, and my starting point for compensation on upholding a complaint about misrepresentation would be to put the complainant back in the same position she would have been in if she had never entered the contract with the travel agency. That would usually mean issuing a full refund. But in this case that is impossible, because Mrs C has already been on the holiday. It's not possible to undo that, so giving her a full refund would be equivalent to giving her a free holiday. That would not be proportionate or fair.

my final decision

So my decision is that I uphold this complaint in part. I order HSBC UK Bank Plc to pay Mrs C ten percent of what she paid in total, minus £75. That comes to a total of £177.28.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 2 April 2020.

Richard Wood
ombudsman