

The complaint

Mr J complains that NewDay Ltd trading as Aqua refused his claim brought under Section 75 of the Consumer Credit Act 1974 (CCA). He wants a full refund of his holiday costs.

What happened

Mr J tells us that he booked a holiday abroad in 2019 with a company I'll refer to as "TC", which has since gone into administration. And that part of the cost of the holiday was paid through his Aqua credit card. He states that the hotel wasn't up to the standard he'd been promised. And that it was full of drunken and aggressive groups. He said the hotel was subject to TC's 24 hour satisfaction promise. And that this stated that if he complained and the issue wasn't sorted within 24 hours, he could obtain either a full refund (which would mean cancelling the holiday and returning home); or be moved to a different hotel of the same standard; or, if he stayed, he'd get a voucher for 25% of the cost, off a future holiday. Mr J says he complained but that TC's representative ignored his complaint. He further states that upon his return home, Aqua told him that his claim would be successful. But then rejected it.

New Day told us it hadn't upheld Mr J's complaint as it hadn't identified there had been a breach of contract or that the 24 hour satisfaction promise applied to this holiday.

Our investigator didn't recommend that the complaint should be upheld. She said that there was insufficient information to show that the hotel was part of the 24 hour satisfaction promise guarantee. Or that there had been a breach of contract.

Mr J didn't agree with this outcome. As it's not been possible to resolve this complaint an ombudsman's been asked to make the final 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.

I understand that Mr J would be disappointed if he felt his holiday didn't meet his expectations. And I'm aware of the concerns he expressed after our investigator's view had been issued.

Mr J's complaint contains several separate elements. These include that the hotel wasn't of the standard he'd been promised due to the conduct of other guests. That the company representative ignored his complaints. And that he was unable to take independent action as he didn't have the funds to finance a move to another hotel. He also says that Aqua initially said his claim had succeeded before turning it down.

I'm aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not responding to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've concentrated on what I think are the key issues here. Our rules allow me to do this.

This reflects the nature of our service as an informal alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome

I think it's important to set out my role here. In considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under Section 75. Rather, I'm deciding what's a fair way to resolve Mr J's complaint. I have to take account of relevant law, amongst other things. Section 75 is relevant law.

In summary, in some limited circumstances, Section 75 gives a consumer an equal claim against the provider of finance as they would have against the supplier of the goods or services about which complaint is brought. It requires there to have been a misrepresentation or breach of contract by the supplier.

It's also important to note that even if there is breach of contract that does not mean a consumer is necessarily entitled to a full refund. If a contract has been partly performed such as by the provision of flights and accommodation then the consumer is usually only able to obtain a partial refund. This would be proportionate to the degree to which the contract had been performed.

Here the information shows that Mr J remained – no doubt reluctantly - at the hotel for the scheduled duration of his holiday. There doesn't seem to be any other information to support the details of the complaint he made such as photographs, recordings or information from other affected guests. So it's probable he would only have been entitled to a voucher worth 25% of the cost off a future holiday or a comparable refund.

In support of his complaint Mr J has supplied screen shots of unfavourable reviews of the hotel from 2016. I assume he was unaware of these prior to his holiday. I don't find these are directly relevant to his complaint. Not only do they relate to three years previously but there is also nothing to show the contents are accurate.

Mr J has been refunded or offered refunds related to this holiday by other businesses. And in total these amount to more than 25% of the cost. This is a highly relevant factor. Where there is more than one party which might potentially be liable for a breach of contract that doesn't entitle the consumer to obtain more than the sum due in respect of the breach simply by complaining separately to each party.

The total cost of the holiday was £2,752.49, of which £252.49 was paid by debit card. £900 by Aqua credit card and the balance by a credit card from another business "C".

It's my understanding that the debit card payment was refunded in full. Whilst C has offered to refund 25% of the holiday cost. So even if there was breach – and I'm not finding that there was – the terms of the satisfaction promise appear to have been met by other providers. As such Mr J cannot show that he's been left out of pocket by Aqua refusing to meet his claim.

In summary, I find that Aqua has dealt with the claim fairly and I shan't ask it to do anything further.

My final decision

For the reasons given above my final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 1 February 2021.

Stephen Ross
Ombudsman