

The complaint

Mrs W complains that NewDay Limited won't refund to her the money that she paid for a cruise. Her husband is also involved with her complaint.

What happened

Mrs W used her NewDay credit card, which is branded as Debenhams, in October 2019 to pay £6,470.48 to a holiday company for a Christmas and New Year cruise. She also made other payments for the cruise. She complained to the holiday company and to NewDay in January 2020 about some issues with the cruise. The holiday company gave Mrs W a £100 holiday voucher. NewDay made a chargeback claim and credited the £6,470.48 back to Mrs W's account. The chargeback was defended by the holiday company.

Mrs W contacted NewDay in April 2020 and was told that the dispute process had been completed and the credit balance on her account of £4,929.46 was transferred to her bank account at her request. NewDay then said that the chargeback claim had been defended by the holiday company and it would consider Mrs W's claim under section 75 of the Consumer Credit Act 1974. It re-debited the payment of £6,470.48 from Mrs W's credit card account but it upheld her complaint in part and awarded her £80 compensation in view of the incorrect information that had been provided to her in April 2020.

Mrs W complained to this service and said that the cruise had been a disaster and wasn't as described. Our investigator didn't recommend that her complaint should be upheld. He had discussed the complaint in detail with Mrs W's husband and he considered each of the points that he understood was being complained about. Although he said that he didn't doubt that Mrs W and her husband had experienced a number of issues on the cruise, he didn't think that he could fairly say that there was a breach of contract or misrepresentation. He said that some aspects of the service that they received may not have met their expectations but he couldn't reasonably conclude that the cruise didn't provide what was agreed or that what was provided was objectively unsatisfactory and he was satisfied that they'd received the flights, transfers and accommodation that Mrs W had paid for. He thought that NewDay had responded fairly and reasonably to Mrs W's claim under section 75.

Mrs W's husband, on her behalf, has asked for this complaint to be considered by an ombudsman. He has responded to our investigator's recommendations in detail and has provided photos showing the food as advertised in the cruise brochure and health and safety documents. He says, in summary and amongst other things, that:

- the injury, pain and missed holiday that he suffered has been played down – he is extremely careful, it's a bit insulting to just state that "*accidents happen*" and he doesn't accept that it was an accident;
- there was nothing around the pool or spa area, and no other warnings were given, regarding wearing protective footwear;
- the holiday company's and NewDay's word has been taken over theirs which infers that they are not being truthful;
- he wants the focus to be on the way in which they were treated by NewDay;

- they booked and paid in good faith for the cruise to celebrate a wedding anniversary and didn't take equipment to record what had happened with the intent of making a claim on their return and expected to receive what they'd been sold, were promised and had paid for;
- it's clear that they didn't receive what they paid for and that the holiday company didn't deliver what it sold them;
- they've complained to this service because of the way that they were treated by NewDay, that it put them into debt without notification, it mis-informed them and paid money back to them only to take it back without notification a few days later;
- the time taken to deal with their complaint to the end of August 2021 has caused an additional £903 of interest to be charged to their account;
- they paid for the upgraded drinks package but on several occasions were *given "non-branded"* drinks and suffered attitude from staff when asked for the correct drinks;
- the dress code wasn't enforced for the captain's gala night;
- there were issues with the cabin and their special anniversary meal which he's described in detail; and
- on a few occasions they had to bring the crew's attention to minors being served alcohol and that there was under-age drinking taking place onboard – but it wasn't addressed by the holiday company or our investigator.

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.

Having done so, I agree with the conclusions reached by our investigator for these reasons:

- Mrs W paid for the majority of the cost of the cruise using her NewDay credit card and, in certain circumstances, section 75 of the Consumer Credit Act 1974 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier;
- to be able to uphold Mrs W's complaint about NewDay, I must be satisfied that there's been a breach of contract or misrepresentation by the holiday company and that NewDay's response to her claim under section 75 wasn't fair or reasonable – but I'm not determining the outcome of Mrs W's claim under section 75 as only a court would be able to do that;
- both Mrs W and her husband have described in detail a wide range of issues that they had with the cruise and they've provided some photos and video in support of what they say;
- this was clearly an important celebratory event for them which included Christmas, New Year and an anniversary and Mrs W has described the cruise as a *"disaster"* - there were issues during the cruise that affected their enjoyment of it and they strongly believe that the cruise wasn't of the quality that they'd expected and paid for, there were breaches of contract by the holiday company and that the cruise was misrepresented to them;
- I sympathise with Mrs W and her husband for all of the issues that they experienced – particularly for the burned feet that were suffered by Mrs W's husband – that must

have been a painful and distressing experience for him which will have affected their enjoyment of the cruise;

- I'm not persuaded that there's enough evidence to show that the injuries that were suffered by Mrs W's husband were caused as a result of the holiday company's failure to provide the cruise with reasonable care and skill or that they resulted from a breach of contract or misrepresentation by the holiday company;
- Mrs W and her husband were provided with the flights, transfers, and board and accommodation during the cruise – they've described some issues with their cabin, particularly relating to the door to the cabin, the lights, a dangerous table and a smell caused by a shower curtain – I can understand why those issues might have affected their enjoyment of the cruise but I'm not persuaded that they're enough to show that there's been a breach of contract or misrepresentation by the holiday company;
- they've also described the issues that they had with the food and the drinks package – I can understand the disappointment that they experienced as a result of the issues with their anniversary meal and it's clear that the food wasn't as good as they expected it to be – but I'm not persuaded that there's enough evidence to show that the food was misrepresented to them by the holiday company or that the holiday company breached its contract with them because of their issues with the food;
- although Mrs W's husband has described the issues that they had with the drinks package and "*non-branded*" drinks, I'm not persuaded that there's enough evidence to show that the drinks package was misrepresented to them or that there's been a breach of contract by the holiday company relating to the drinks package;
- Mrs W's husband has said that the dress code wasn't enforced for the captain's gala night and that other guests weren't smartly attired and he's complained about other issues such as under-age drinking – although they were clearly issues that caused frustration and disappointment for Mrs W and her husband, I don't consider that those issues are enough to be a breach of contract or misrepresentation by the holiday company;
- whether or not a holiday or cruise is of an acceptable standard is often very subjective and what is acceptable to one customer might not be acceptable to another – but because a customer doesn't consider it to be of an acceptable standard doesn't mean that there's been a breach of contract or misrepresentation;
- the holiday company has provided reviews that were posted at the time of Mrs W's cruise from other guests which are very positive and I consider it to be more likely than not that other customers will have found the cruise to have been of satisfactory quality;
- it's clear that there were some failings by NewDay in the way that it dealt with Mrs W's chargeback claim and that will have caused her distress and inconvenience – it has accepted that she was given incorrect information about the claim in April 2020 and that it then didn't send her an e-mail before it re-debited the £6,470.48;
- I consider that NewDay should have done more to notify Mrs W before the payment was re-debited from her account but it has apologised and has credited £80 to her account - I consider that to have been a fair and reasonable response to those issues and I'm not persuaded that it would be fair or reasonable for me to require NewDay to pay her any more compensation for those issues;
- I don't consider that NewDay shouldn't have re-debited the payment to Mrs W's account or that there's enough evidence to show that it's incorrectly charged interest on that amount;

- I sympathise with Mrs W and her husband for all of the issues that they've described but I'm not persuaded that those issues, either individually or collectively, are enough to be a breach of contract or misrepresentation by the holiday company for which NewDay would be liable under section 75;
- I consider that NewDay's response to Mrs W's claim under section 75 has been fair and reasonable in these circumstances; and
- I find that it wouldn't be fair or reasonable for me to require NewDay to refund to Mrs W any of the money that she paid for the cruise, to pay her any other compensation or to take any other action in response to her complaint.

My final decision

My decision is that I don't uphold Mrs W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 10 December 2021.

Jarrold Hastings

Ombudsman