

The complaint

Mr D feels that NewDay Limited has treated him unfairly in relation to the purchase of a golf trip.

What happened

In April 19 Mr D arranged a golf trip for a total of eight people abroad. The trip included all-inclusive accommodation, transfers and five golf rounds for those on the trip. He paid the remaining £6580 on his NewDay credit card on February 2020. The trip was due to take place in May 2020 but was cancelled due to the Pandemic. Mr D tried to get his money back from the company he paid, which I'll call 'Firm G'. But he was unsuccessful. So he took his complaint to NewDay.

NewDay looked into it but said he was out of time for a Chargeback and that the required relationship wasn't in place for a successful claim under Section 75 of the Consumer Credit Act 1974. So Mr D brought his complaint to this service.

Our investigator considered the matter and upheld the complaint under S75 of the Consumer Credit Act 1974. They required NewDay to refund Mr D the amount paid to his card account on the date he raised the dispute with it, rework the account from that date and pay 8% on any periods from then when the reworked account was in credit to Mr D.

NewDay responded to say it had treated Mr D fairly and didn't accept the Investigator's position, so this dispute comes 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.

Section 75 claim of the Consumer Credit Act 1974

Mr D can bring a claim under Section 75 claim of the Consumer Credit Act 1974 (the CCA) if certain requirements are met. The general effect of section 75 is that if Mr D has a claim for misrepresentation or breach of contract against a supplier of goods or services, he can also bring that claim against NewDay (provided certain conditions are met as I've described).

I've considered the financial limits requirement of the CCA and I'm satisfied that is met here. NewDay is arguing that the required Debtor Creditor Supplier relationship under the CCA isn't met here. Its thinking is that Mr D paid Firm G but the accommodation was provided by a hotel, the transfers by a transfer company and the golf rounds by another company. But as the Investigator explained:

"It is clear Mr D booked a packaged holiday. I am satisfied it was a package trip for the purposes of the Package Travel and Linked Travel Arrangements Regulations 2018 (PTR). This is because it was a prearranged combination of an all-inclusive hotel, airport transfers, 5 rounds of golf and golf shuttles, and it confirms on the booking confirmation it was sold for

an inclusive price. Having reviewed the evidence, I can see the booking invoice confirms the total cost of £6,680 for the package holiday. While the package trip was provided by a series of different suppliers, the PTR's operate to place liability for the performance of the travel services included in a package on the organiser, irrespective of whether the travel services are performed by third parties."

NewDay hasn't argued or indeed commented on this point in its response, which is disappointing bearing in mind it is at the crux of the matter. The Investigator pointed to the PTR's and said specifically *"the PTR's operate to place liability for the performance of the travel services included in a package on the organiser"*. The Investigator has said this because in the PTR's Regulation 13 says:

"The 2018 PTRs explicitly places liability for the performance of the travel services included in the package on the organiser (regulation 15) irrespective of whether the travel services are performed by third parties."

Regulation 5 defines *"travel services"* to include carriage, accommodation, motor hire and other tourist services. And Regulation 15 defines the *"organiser"* as *"the trader who combines and sells packages."* Clearly in this context Firm G is the Organiser. And I note NewDay hasn't in anyway sought to argue that Firm G isn't the Organiser as per the PTRs. I'm satisfied it is the organiser and under the PTR's it holds the liability for the performance of the contract.

Accordingly the DCS requirement of S75 of the CCA is met because Mr D is the debtor, NewDay is the Creditor and Firm G is the Supplier (because the PTR's make it legally responsible for the delivery of the performance of the package). So NewDay's arguments about DCS are unpersuasive here. All in all I am satisfied that the required criteria for NewDay to be held responsible for any breach or material misrepresentation under Section 75 of the CCA is met.

Breach

I've considered the emails between Mr D and Firm G and it is clear Firm G are not offering a refund, as per its terms and conditions, which state:

"Where we have to make any significant changes to the material characteristics of your trip, we will notify you of these as soon as possible and give you the option to either continue with your booking (where possible), re-arrange your booking or accept an alternative trip we offer or cancel your booking and receive a full refund (with no cancellation fee being deducted)."

As the trip didn't happen due to the pandemic and Firm G didn't fulfil the terms above there is clearly a breach. And under S75 for the reasons given NewDay is as liable as Firm G is. And even if it wasn't liable under the PTR's it is clear that Firm G have an agreement with Mr D to provide a full refund in the event of non-performance of the trip and haven't done so. So it's a breach of contract whichever way, and indeed in both ways of looking at it.

I note that Mr D has set out in an email to NewDay in November 2020 that one of the party, managed to recover costs through their insurance. Accordingly the amount due to Mr D is £5845 which covers the total cost less that redressed separately. I note that this group of individuals aren't named individually, and that Mr D paid for them all. Accordingly I'm satisfied the only contract here is between Mr D and Firm G.

Accordingly it is my decision that this complaint should be upheld and NewDay should have redressed the matter when Mr D brought his complaint to it had it treated his Section 75 fairly.

Putting things right

Accordingly I direct NewDay to rework Mr D's account by refunding it with £5845 as of 28 January 2021 (the date it told him his claim was unsuccessful). Having done this it should then pay 8% interest on any periods of credit balance on Mr D's account between then and when it settles the complaint.

My final decision

For the above reasons I uphold this complaint about NewDay Limited and direct it to remedy the situation as I've described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 1 March 2023.

Rod Glyn-Thomas
Ombudsman