

The complaint

Mr P complains that John Lewis Financial Services Limited (“JLFS”) declined his claim for a refund of his purchase of a package holiday.

What happened

In November 2019 Mr P booked a package holiday to Florida for his family (three hotel rooms for nine people over two weeks). He paid £14,419.95 with his JLFS credit card in five instalments. (The holiday was delayed until 2022 due to the pandemic.) The hotel was advertised as a three star hotel in a family-friendly resort. But it fell well short of Mr P’s expectations. He complained about the following shortcomings:

- The hotel was “shabby, run down, noisy, and dirty”, and the rooms were tired and drab;
- The rooms were only cleaned weekly, and to a poor standard, so that the rooms were still dirty and the bathrooms were mouldy;
- The rooms were also dark, because Mr P and his family had to keep their curtains closed for privacy, as the windows looked out onto a public walkway;
- The hotel was close to a major road and so it was noisy, and the air conditioning rattled noisily, making it hard to sleep;
- There was perpetually a smell of cannabis in many common areas, which Mr P said was not consistent with being “family friendly” (his grandchildren were on the trip);
- Consequently Mr P and his family were unable to relax in the hotel and so they only slept there, spending the rest of their time elsewhere.

Not currently part of Mr P’s complaint, but still relevant for reasons I’ll come to later, was that his daughters’ two rooms suffered from blocked drains, which they did not tell Mr P about at the time. The hotel agreed to pay a partial refund of £1,085.39, via the travel agency. The travel agency failed to pass this money on, and one of Mr P’s sons-in-law eventually had to sue for it. Mr P has told us that this lawsuit was successful, and that the money was paid to his son-in-law.

The result of all this was not only that the holiday was spoiled, but that Mr P felt ashamed that he had let his family down. He complained to the travel agency, and also to JFLS under section 75 of the Consumer Credit Act 1974. He asked for a full refund, and also for some expenses, and for compensation for loss of enjoyment. He asked for £34,464.39 in total.

JFLS did not agree that Mr P was entitled to what he was asking for. But it agreed to honour the hotel’s offer of £1,085.39, and offered to pay this amount to Mr P (because this was before the lawsuit, and the refund was still outstanding). Being dissatisfied with that response, Mr P rejected that offer and brought this complaint to our service. He said that JFLS had been wrong to treat his son-in-law’s separate complaint as if it was part of his own, and to offer to pay him a refund that had been promised to his son-in-law.

Our investigator did not uphold this complaint, because he thought JLFS’s offer was fair. Mr P did not accept this decision, for the same reasons as he had criticised that offer (as well as other reasons). He asked for an ombudsman’s 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.

Where it applies, section 75 gives a consumer (Mr P) the same right to bring a claim against the provider of credit (JLFS) as he already has against the supplier of goods or services (the travel agency), if there has been a breach of contract or a misrepresentation by the supplier. A misrepresentation is a false statement of fact which caused Mr P to enter a contract.

JLFS rejected Mr P's claim on the ground that loss of enjoyment does not qualify under section 75. I think that was a mistake. Loss of enjoyment is clearly a foreseeable consequence of a sufficiently serious breach of contract or misrepresentation arising in respect of a contract to provide a package holiday. And under the Consumer Rights Act 2015, it was an implied term of Mr P's contract that services would be provided with reasonable care and skill. Regulations provide that the travel agency is liable to Mr P for any failure by the hotel to comply with that term. It follows that under section 75, JLFS is liable to him too.

However, I agree that the remedy for upholding such a complaint is not a full refund (and certainly not more than double what Mr P paid for the holiday). Instead, the Consumer Rights Act says that the remedy is to reduce the price "by an appropriate amount". Sometimes a full refund will be appropriate, but not here, because Mr P and his family were still able to go on their holiday, and their flights and their experience outside the hotel were not affected by the things he has complained about, which all relate to the hotel. And I think that a trip to Florida would be wasted if they had never left the hotel, so it was always likely that they were going to spend some time away from the hotel. So instead, fair compensation would be a modest reduction of the price.

I do not accept Mr P's recent submissions that the refund promised by the hotel was nothing to do with him, or that the blocked drains were never part of his complaint. That is because in his original complaint letter to the travel agency, dated 13 June 2022, he specifically referred to the blocked drains as part of his complaint. Then in his section 75 claim letter to JLFS, dated 29 June 2022, he referred to the blocked drains again, as part of his claim. Although in that letter Mr P said it had been his son-in-law who had negotiated the refund for that issue, he went on to say that this refund was going to be paid to himself; that is, to Mr P.

Furthermore, I do not accept that this refund was solely for the blocked drains, or for only two of the rooms. I have read the email correspondence between the hotel and Mr P's son-in-law, and it is clear that he was complaining about all three rooms. The emails refer not only to the blocked drains, but also to the poorly cleaned rooms, and the smell of marijuana. And the hotel stated that the refund was in relation to all three rooms.

So I don't think that JLFS made a mistake in offering to pay him that amount in lieu of the travel agency paying it to him. It was certainly relevant to his claim.

JLFS's offer has since been superseded by the subsequent lawsuit. I don't think it matters whether that money was paid to Mr P or to his son-in-law. It clearly relates to the subject matter of this complaint. So I will take that money into account when deciding what would be a fair resolution to this complaint, and I will deduct it from the amount of compensation which I would otherwise have awarded. (If it was paid to Mr P's son-in-law instead of to Mr P, then that is a matter between them.)

I also take into account that the hotel also waived or refunded some additional fees which it had charged during the first eleven days of Mr P's stay, and gave his family \$150 in credits for food and drink (which was calculated as \$50 per room).

I have seen photos of the hotel, and I am satisfied that the room or rooms in the photos had not been cleaned properly at the time they were taken, and that the dirt had obviously been present for quite some time (not just during Mr P's stay). In a couple of spots it would be accurate to describe conditions as filthy. And there were several spots of mould in the bathroom. The overall condition was far below what would be acceptable in any hotel, regardless of its star rating. So I uphold that part of this complaint. (However, I have ignored the photos of the toilet, because there is no way of knowing when they were taken.)

I also uphold the complaint about the smell of cannabis, since the hotel did not dispute that, and also because I have seen a number of online reviews which mention it. And as I have seen online reviews which refer to broken and noisy air conditioning units, and noise from a nearby road, I have no reason to disbelieve what Mr P has said about those issues too, and about the general shabbiness of the hotel overall.

£1,085 is only about 7.5% of what Mr P paid for the holiday. Although part of the total cost would have been for the flights, I still think that this is not enough to compensate him for everything that was wrong at the resort. Taking into account everything I have said above, I think that about 15% would better reflect what happened.

For that reason, I think it would be fair to require JLFS to pay Mr P the £1,085.39 it has offered him, notwithstanding that this same amount has already been paid to his son-in-law.

My final decision

My decision is that I uphold this complaint. I order John Lewis Financial Services Limited to pay Mr P £1,085.39.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 25 May 2023.

Richard Wood
Ombudsman