

## **The complaint**

Mr S complains that NewDay Ltd, trading as Opus, won't refund him for a package holiday.

## **What happened**

In May 2023 Mr S used his NewDay Ltd, trading as Opus, ('Opus' for short) credit card to pay for a package holiday for his family. Mr S says that there were not enough food choices available to them as vegetarians and that there were cockroaches in the accommodation. He says he informed the package holiday supplier of his child's disability needs before departure. He complained about these issues whilst on the holiday and they moved rooms. Once the holiday was completed he complained to Opus.

Opus considered his dispute with the holiday supplier under both the chargeback process and under a claim under section 75 of the Consumer Credit Act 1974 ("S75" and "CCA" respectively). It concluded that it didn't have to do anything further for Mr S. Feeling that Opus' position to be unfair Mr S brought his complaint to this service.

Our investigator looked into the matter. Overall, she felt that Opus had fairly treated Mr S. However Mr S didn't agree. So the complaint has been passed 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.

I should make very clear that this decision is not about the holiday package supplier which isn't a financial services provider and doesn't fall within my remit regarding either chargeback or Section 75. Whatever the issues there maybe with the package supplier here, and just because Mr S says he has lost out, it doesn't necessarily follow that Opus has treated Mr S unfairly or that it should refund him the full amount. And this decision is solely about how Opus treated Mr S. I hope this point is clear.

### *chargeback*

There's no dispute that Mr S's Opus card was used here in this transaction. So I don't think Opus did anything wrong by charging this transaction to his account when it did.

In certain circumstances, when a cardholder has a dispute regarding a transaction, as Mr S does here, Opus (as the card issuer) can attempt to go through a chargeback process. Chargeback is a voluntary process which is decided simply on the facts of the dispute within the rules of the card scheme (not managed by Opus). I don't think Opus could've challenged the payment on the basis Mr S didn't properly authorise the transaction, given the conclusion on this issue that I've already set out.

This service considers it good practice to raise chargebacks where firms feel that the chargeback has a reasonable prospect of success. Here, however Opus didn't pursue a

chargeback to the end of the process because it didn't feel Mr S' dispute had a reasonable prospect of success. And I agree.

Mr S isn't saying there was no vegetarian food but that there was not enough variety and options of vegetarian food. But Mr S didn't go on a vegetarian only holiday or one where there was any guarantee of a certain number of vegetarian options. So I'm not persuaded he's not received something he was promised or that he was misled. And I note the holiday supplier provides notes within its terms about people with specific food requirements which states that if individuals have such requirements that they should only book accommodation only type holidays and source their own food on such a holiday. Within the same terms it makes clear that insects are a matter of fact in hot countries and it doesn't provide any guarantees that such insects won't be present.

Mr S and family stayed for the entire period of the booking I see no persuasive reason to believe any of the chargeback reason codes would have been successful bearing the above in mind. Accordingly I'm not persuaded that Mr S has been treated unfairly by Opus not taking his chargeback further as I don't think any such chargeback under any available reason code would have been successful. So he hasn't lost out due to Opus' stance on chargeback.

### *The CCA*

The CCA introduced a regime of connected lender liability under S75 that afforded consumers ("debtors") a right of recourse against lenders ("creditors") that provide the finance for the acquisition of goods or services from a third-party merchant (the "supplier"). S75 says:

*"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor."*

I'm satisfied the CCA pre-requisites of financial limits and the Debtor Creditor Supplier arrangement are met. So the test is here, did Opus consider Mr S's S75 claim to it fairly, or in other words is there a breach of contract or material misrepresentation made out here against the holiday company that Opus should fairly be held responsible for. It is of note that breach of contract and misrepresentation is all that Opus can be accountable for. It isn't responsible for the customer service Mr S received on the holiday. Nor is it responsible for the holiday not meeting Mr S's expectations, as is clearly the case. In this case, bearing in mind the issues raised by Mr S, it can only be held responsible where Mr S can show that either he was told there would be a larger variety of vegetarian meals than there were or where he can show he was guaranteed no cockroaches or made some other binding agreement in relation to insect life.

I should start by noting that Mr S accepts he and family used the whole holiday and stayed at the accommodation as planned. Bearing in mind that Mr S hasn't commented significantly on the other aspects of his holiday and its clear he's had those aspects of the holiday issue free it would be clearly unfair on Opus for Mr S to get a full refund. This is because clearly he and his family had the benefit of items such as flights and accommodation for the booked period.

Mr S should remember, just like a legal claim against the supplier, he has to support his claim with persuasive argument or evidence about any breaches or misrepresentations. And then Opus has to consider such a claim fairly. I've considered the terms and conditions of

the package supplier and the advertised holiday. I note that when entering the contract to purchase the holiday consumers are obliged to accept such terms and conditions.

Mr S hasn't pointed to any specific part of the terms and conditions which he says were breached nor pointed to any part of the advertised description of the holiday which he says was untrue. He's focussed on pointing at evidence of cockroaches and messages about the lack of food options for vegetarians. There is as much of an onus on consumers to make out their claim as it is for such claims to be considered fairly I note Mr S has made no persuasive arguments about breach of contract or material misrepresentation. I've considered the terms and conditions and all the evidence here and I've seen nothing persuasive to indicate any guarantees about vegetarian food options or the levels of insect life.

I appreciate that these issues Mr S says he and family encountered weren't to his liking or expectation. However that's a substantially different test to whether Opus has considered his S75 claim to it fairly or not and this is the test here. And just because it's not what Mr S was expecting doesn't mean it's fair that Opus refund in either full or in part.

I should add that although Mr S is clearly invested in this matter and clearly feels the package supplier are at significant fault, he hasn't persuasively demonstrated why Opus's position on the holiday itself is unfair bearing in mind the terms and conditions he agreed. And it has to be remembered this dispute and this decision is about how Opus treated Mr S only.

I'm sorry it was so distressing for him, his son and family. Mr S refers to these events having a severe effect on his mental health and I'm sorry to hear this also. He also points to making special arrangements for his disabled son before departure. And I can see these special arrangements concerned accessibility issues to the flights which I understand were met. I've not seen any persuasive evidence showing that the supplier agreed with Mr S to deviate from its standard terms for Mr S and family with regard to vegetarian meals or insect life. So I'm satisfied the standard terms do apply which clearly inform Mr S of what to expect and do in relation to specialist food requirements and insects. So I don't think Opus has done anything wrong here by not refunding Mr S.

Mr S says he's travelled a lot and not encountered such problems. I've no reason to doubt this. Nevertheless that doesn't demonstrate Opus has treated him unfairly in its consideration of chargeback or S75.

I do appreciate that this isn't the decision Mr S wants to read. And that it leaves him disappointed. But that doesn't make it fair for Opus to cover this disappointment regarding his holiday through refunding him either as a result of how it considered chargeback or S75. I'm not persuaded a breach of contract or misrepresentation has been made out here due to the terms and conditions in place. And I don't think any chargeback raised would have been successful on these facts. I appreciate Mr S was disappointed with his holiday, but it not meeting his expectations isn't the test I must apply. I've set out the tests Opus are to be tested on and I'm satisfied it met them. Accordingly Mr S's complaint about Opus is unsuccessful.

### **My final decision**

For the reasons set out above, I do not uphold the complaint against NewDay Ltd, trading as Opus. It has nothing further to do on this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 September 2024.

Rod Glyn-Thomas  
**Ombudsman**