

## **The complaint**

Miss B complains that NewDay Ltd won't refund her for a package holiday.

## **What happened**

In October 2023 Miss B used her NewDay Ltd credit card to pay for a package holiday departing later in that October. Miss B says she is a competitive athlete and that she chose a resort with a gym as that was key to her decision to go to the resort she chose. She says when she got there it didn't have a gym and so she complained. She also had issues with her room door getting severely damaged. She accepts she stayed at the resort for the duration of the booking. She was offered a modest amount by the package holiday supplier for any confusion but it noted that it hadn't advertised the resort had a gym but rather it had a fitness centre. And that a fitness centre is where people could do any form of fitness and that had been supplied. So it didn't agree with Miss B. So she took her complaint to NewDay.

NewDay considered her 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 Miss B. Feeling that NewDay's position to be unfair Miss B brought her complaint to this service.

Our investigator looked into the matter. Overall, he felt that NewDay had fairly treated Miss B. However Miss B 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 Miss B says she has lost out, it doesn't necessarily follow that NewDay has treated Miss B unfairly or that it should refund her the full amount. And this decision is solely about how NewDay treated Miss B. I hope this point is clear.

### *chargeback*

There's no dispute that Miss B's NewDay card was used here in this transaction. So I don't think NewDay did anything wrong by charging this transaction to her account when it did. In certain circumstances, when a cardholder has a dispute regarding a transaction, as Miss B does here, NewDay (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 NewDay). I don't think NewDay could've challenged the payment on the basis Miss B 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 NewDay raised a chargeback and the holiday supplier provided a substantial response robustly defending its position. In essence it said there was no wrong advertising here. Everything advertised was provided. NewDay considered this it didn't pursue a chargeback to the end of the process because it didn't feel Miss B's dispute had a reasonable prospect of success. And I agree. I've considered the advertising from the time and Miss B's recent submissions of pictures from her old phone. As described Chargeback is a straightforward process for disputes to be resolved but isn't designed to involve significant investigation or evidence gathering. It is clear here that the entire booking of flights and accommodation were both supplied and utilised completely. Miss B points to facilities she said she went to this location for but I'm not persuaded by her arguments. Clearly in the contract agreed for this holiday there is provision for facilities to be varied or not available. Furthermore it is made clear that the supplier cannot be held responsible for failings in the information supplied to it by resorts as to the facilities offered. It is also clear that although Miss B talks about expecting a 'gym' which could be defined in a number of ways but has no finite definition of what it must contain, what was advertised was a 'fitness centre' which frankly has a far broader definition and could contain or not contain an even broader number of facilities. It is clear to me that two fitness centres could have entirely different facilities offered from the other but both be equally entitled to be defined as a fitness centre. So had NewDay taken this dispute to the end of the process I'm not persuaded that this would have been successful or partially successful on balance. So Miss B hasn't lost out due to NewDay's 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, she 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 NewDay consider Miss B'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 NewDay should fairly be held responsible for. It is of note that breach of contract and misrepresentation is all that NewDay can be accountable for. It isn't responsible for the customer service Miss B received on the holiday. Nor is it responsible for the holiday not meeting Miss B's expectations, as is clearly the case. In this case, bearing in mind the issues raised by Miss B, it can only be held responsible where Miss B can show that she was told there would be a gym.

Firstly I should make clear that it is evident that Miss B used the flights and stayed at the accommodation throughout. So even if I were persuaded she was misrepresented into going on the holiday (which I'm not) I'd have to consider the significant benefit received here. Accordingly if I did find misrepresentation then the remedy would be price reduction (refund) to take this substantial benefit into account and any such price reduction would thus be modest.

As I've eluded its clear that the facilities on this holiday weren't to her expectation. However for NewDay to be held liable Miss B has to show it was misrepresented to her. Misrepresentation is broadly defined as a false statement of fact which is reasonably relied

upon leading to a loss. Here I'm not persuaded there was any false statements of fact. Miss B says the fitness centre was essentially a hut on a beach where fitness activities took place. Clearly this wasn't to her expectations. But it doesn't make this a false statement of fact. Clearly there was a facility which had fitness endeavours located there. It may be the case these were rather poor or limited facilities but that does not make it a false statement of fact. And having reviewed the advertising there is no detail as to what would be provided. There is no detailed list of equipment for example. So although clearly falling substantially short of what Miss B expected I'm not persuaded NewDay has treated her unfairly in this regard.

I also note that Miss B points to a phone image of what was available for use in terms of facilities however I've not seen that these are advertised as specifically being on site. These are appended with a note that charges would apply. And I note that she's said on her documentation to this service that when she raised these issues the hotel explained where these facilities were and costs would apply. So I don't think she's been misrepresented here either.

Miss B points to the issue of NewDay's letter saying the supplier had forty five days to respond and she didn't hear in that time that it had so she thought she'd been successful. I'm not persuaded such timescales are helpful in such letters because of the lack of clarity about such matters and that although talking about chargeback this doesn't mean S75 disputes would be completed in that time. Nevertheless I'm not persuaded Miss B lost out financially here due to this information given so I don't think it makes a difference.

From what Miss B says it appears she's not been paying back this borrowing. Just because Miss B has a dispute with the holiday supplier or is unhappy with NewDay doesn't mean she's relieved of her contractual obligations to repay the money she borrowed from NewDay. Furthermore NewDay is obligated to report non-payments to credit reference agencies and is entitled through the contract Miss B agreed with it to make charges for late payment and similar charges. So I'm not persuaded NewDay has acted unfairly on this issue. Miss B says that lack of communication has left her in a bad financial situation. I'm not persuaded by this. Miss B agreed in her contract with NewDay to make repayments in line with the agreement made. If she didn't do this and there have been repercussions as a result I'm not persuaded NewDay has done anything wrong. NewDay didn't say to Miss B that she didn't have to make repayments to it in line with their contract.

Miss B says events have left her at a mental low and been stressful. I'm sorry to hear this. However her fundamental dispute here is with the holiday supplier and that doesn't mean she didn't have to pay NewDay as she'd agreed. I appreciate that these issues Miss B says she encountered weren't to her liking or expectation. However that's a substantially different test to whether NewDay has considered her S75 claim or chargeback fairly or not and this is the test here. And just because it's not what Miss B was expecting doesn't mean it's fair that NewDay refund in either full or in part.

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

Miss B says quite a lot of this dispute has become 'pedantic' and I can appreciate why she feels this. But to qualify as a misrepresentation there has to be a false statement of fact. And I've not seen this here. Clearly Miss B had expectations of what facilities she assumed would be present. But I see no false statement of fact here. This may be pedantic to Miss B but NewDay doesn't have to do anything unless she shows statements were false. And in her

own words she accepts such facilities were available at a cost and the advertising shows there would be costs.

I do appreciate that this isn't the decision Miss B wants to read. And that it leaves her disappointed. But that doesn't make it fair for NewDay to cover this disappointment regarding her holiday through refunding her 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. And I don't think any chargeback raised would have been successful on these facts. I appreciate Miss B was disappointed with her holiday, but it not meeting her expectations isn't the test I must apply. I've set out the tests NewDay are to be tested on and I'm satisfied it met them. Accordingly Miss B's complaint about NewDay is unsuccessful and thus it doesn't have to do more. If Miss B wants to accept the offer made she should get in contact directly to see if it is still available.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 4 November 2024.

Rod Glyn-Thomas  
**Ombudsman**