

The complaint

X complains about the way in which NewDay Ltd, operating under its Marbles credit card brand, handled her claim after a holiday company provided her with an unsatisfactory holiday package.

What happened

X is a wheelchair user who travels with a family member; they act as her carer. In January 2023 she used her Marbles credit card to pay for an overseas holiday, which she booked through a well-known online travel business. The booking included flights, hotel and transfers. X took the holiday in February 2023.

X says that there were a number of problems with the holiday, including but not limited to the following:

- She had to pay an extra fee to check in at the airport.
- When she arrived at her destination, neither the airline nor the airport was able to provide her with the assistance she needed.
- The transfer vehicle provided was not accessible.
- The hotel which had been booked was unable to provide her with an accessible room, even though she had told the online booking company that she needed one.
- The hotel was able to offer X an alternative at a sister hotel in the same area, but the room there still required her to climb a few steps. She had to pay for a taxi to get from the first hotel to the second.
- There was no on-site restaurant, so X had to travel elsewhere for meals.

X complained to the holiday company and then to NewDay. NewDay said that there was insufficient evidence to support a claim against the holiday company. As X's credit card provider, it could not therefore be held liable either. X referred the matter to this service, where one of our investigators considered what had happened. She didn't recommend that the complaint be upheld, again largely because of the lack of evidence.

X did not accept the investigator's assessment and asked that an ombudsman review the case.

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 goods or services are paid for with a debit or credit card and a dispute arises, it is often possible to resolve that dispute through the chargeback process. Chargeback is a scheme run by the card schemes (in this case, Mastercard). A card issuer (here, NewDay) raises a claim through the scheme against the merchant's provider of card facilities.

NewDay did that here, but the claim was not successful – it seems because the holiday company was able to show that the services offered had been provided. In the circumstances, I think it was reasonable for NewDay not to take that any further. Whilst she was unhappy with some aspects of the holiday, X had received flights, transfers and hotel accommodation.

One effect of section 75(1) of the Consumer Credit Act 1974 is that, subject to certain conditions, an individual who uses a credit card to pay for goods or services and who has a claim for breach of contract or misrepresentation against the supplier of those goods or services has a like claim against the credit card provider.

The holiday provider was not the direct supplier of X's flights, hotel accommodation or airport transfers. Its primary role was to book those elements of the holiday and to pass payment on.

However, where a holiday is booked as a package – as was the case here – regulation 15 of The Package Travel and Linked Travel Arrangements Regulations 2018 makes the organiser responsible for the performance of the services included in the travel contract. And it is not sufficient that services are provided; they should be of a satisfactory standard in the circumstances.

I have therefore considered whether the individual suppliers provided, to a satisfactory standard, the services which had been arranged.

I have listed above the elements of her holiday which X says were unsatisfactory. In respect of the first two – the fee for checking in at the airport and the lack of facilities at the destination – I note that the booking information explained that passengers should check in online. Since X did not do that, I do not believe I can fairly say that she was treated unfairly when she had to pay a fee for doing so at the airport. And I do not believe either that it was part of her agreement with the holiday company or the airline that X would be provided with assistance at her destination airport. I can see why she was upset at what had happened, but I don't believe I can fairly hold NewDay liable for that.

The information provided also explained that transfer vehicles might not be fully accessible. I cannot fairly conclude therefore that X was not provided with what the holiday company agreed would be provided.

I can understand too that the lack of on-site restaurant facilities caused X significant inconvenience, given her situation. What might have been a relatively minor inconvenience for some guests was much more serious for her. However, the information provided about the hotel did say that some facilities might be unavailable out of season (which would include February, when X travelled), so again I do not believe I can fairly conclude that X was not provided with what had been agreed.

I turn finally to the hotel itself. X had explained that she needed an accessible room, and the holiday company had agreed to arrange that. It was of course the responsibility of the hotel to provide what X had agreed with the holiday company, but the 2018 Regulations made the travel company responsible if it did not.

Unfortunately, however, there is little evidence of what was provided at either the first or the second hotel. X says that neither she nor her carer took photographs, for example. And I do not believe that I can safely interpret the first hotel's offer of a room in a sister hotel as an admission that its own room was objectively unsuitable. And even if I were to do so, it is possible that the alternative offer was a suitable remedy. But, because I have very little evidence of what was provided, I do not believe I can fairly say that NewDay should compensate X.

It is not for me to say whether X does in fact have a claim against the holiday company – or indeed, the airline or hotel company. Nor is it for me to decide whether she has a claim against NewDay under section 75 of the Consumer Credit Act. What I must do is decide what I consider to be a fair resolution of X's complaint about NewDay. I am not persuaded however that there is sufficient evidence that I can properly uphold the complaint.

My final decision

For these reasons, my final decision is that I do not uphold X's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 25 November 2024.

Mike Ingram

Ombudsman