

The complaint

Ms G is unhappy with how NewDay Ltd (NewDay) handled her payment dispute claim.

What happened

Ms G booked a 14 night villa stay commencing 16 June 2023 with an agent I shall call 'M'. This was paid using her NewDay credit card at a total cost of £6,887.50 for two people including flights and use of a hire car. This comprised of a £500 initial deposit with the rest paid later. However on arrival at the villa Ms G discovered the owner was staying in close vicinity. She has said this substantially impacted her privacy and felt a full refund was due.

As the matter wasn't resolved satisfactorily with M, Ms G contacted NewDay to raise a chargeback claim against M and a Consumer Credit Act 1974 ("CCA") section 75 claim ("S75") against NewDay.

I can't see that NewDay raised a chargeback claim but they did consider the S75 claim and reached the outcome that there hadn't been a breach of contract or misrepresentation by M. They issued a final response letter (FRL) on 19 June 2024 confirming they didn't think there was a valid S75 claim and noted Ms G had stayed for the entirety of her booking but did acknowledge they'd made an error regarding the offer made by M to address the issue. M had offered £500 in total to settle the complaint but NewDay had said only £300 had been offered. NewDay offered to credit Ms G's account with £50 to put this right.

Ms G didn't find NewDay's response satisfactory and brought her complaint to our service. Our investigator reviewed her complaint and reached the conclusion that NewDay hadn't done anything wrong. They noted NewDay hadn't raised a chargeback claim but felt that it wouldn't have met the card issuer time limits in any event. Regarding the S75 claim they also felt there was insufficient evidence that Ms G was impacted to a degree that would suggest a refund greater than that already offered by M.

Ms G didn't agree and asked for an ombudsman to issue a final decision on the matter.

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 previously issued a provisional decision on the matter. I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've read and considered the evidence submitted by the parties but won't comment on it all – only the matters I consider to be central to this complaint. This isn't intended as a discourtesy but reflects my role in resolving disputes informally.

It's important to note that NewDay aren't the provider of the services here – so in deciding what is fair and reasonable, I'm looking at their particular role as a provider of financial services. In doing so I note that because Ms G paid for this transaction using her credit card, both chargeback and a S75 claim could possibly help her. So in deciding what is fair and reasonable I've focussed on this.

Chargeback

There is no requirement for NewDay to raise a chargeback, but it's often good practice to do so. However, a chargeback isn't guaranteed to succeed and is governed by the limitations of the particular card scheme rules (in this case MasterCard). I've considered the relevant chargeback rules in deciding whether NewDay acted fairly.

The relevant chargeback reason code here would be 'Goods / Services Not as Described' as Ms G said the accommodation wasn't as expected.

However I must also consider the relevant time limits within which a chargeback claim must be raised under these card issuer rules. These say that a chargeback must be initiated within 120 days from when the transaction occurred or 120 days from the last date the cardholder was expected to receive the merchandise or service.

As the booking details confirm Ms G's stay commenced on 16 June 2023, the chargeback would've needed to have been raised within 120 days from this date. I see from Ms G's complaint form that she said she contacted NewDay on 31 January 2024 to request a refund of the full transaction.

The claim was therefore raised outside the timeframe required. Therefore I don't think NewDay did anything wrong in not progressing a chargeback dispute. I still think it would've been helpful for NewDay to explain to Ms G that this is an avenue of redress they'd normally consider and why it wasn't possible here.

S75

S75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there is either a breach of contract or misrepresentation by the supplier of goods and services.

To assess a valid claim, NewDay would've needed to consider all relevant evidence for the alleged breach of contract or misrepresentation. But for there to be a valid claim under S75 there are certain criteria that also need to be satisfied. I've considered the financial limit requirement of S75 and I'm satisfied that is met here. There also needs to be a valid agreement between the debtor who took out the finance and the supplier of goods or services in dispute.

In this case the debtor is Ms G who purchased the holiday via her credit card and the payment was to M. However, the question is whether Ms G also had the required contractual agreement with M for there to be a valid Section 75 claim for which NewDay is liable. So I need to decide if the necessary agreement exists for a valid S75 claim.

I've reviewed Ms G's booking confirmation and am satisfied she contracted with M for the provision of her package holiday. I note the Packaged Travel and Linked Travel Regulations 2018 (PTR) under Regulation 15 explicitly places liability for the performance of the travel services included in the package on the organiser irrespective of whether the travel services are performed by third parties.

The PTR also define "travel services" to include carriage, accommodation, motor hire and other tourist services. It also defines the "organiser" as "the trader who combines and sells packages".

I'm therefore persuaded that Ms G's contract with M confirmed the necessity of an appropriate performance of the accommodation and section 8.1 of M's own terms and conditions also confirms the same and that appropriate compensation would be paid if they or the accommodation supplier negligently performs or arranges the services. I'm thus satisfied that the required relationship exists here between the debtor, creditor and supplier for a S75 claim to be considered.

The crux of Ms G's complaint is about the fact she wasn't aware that the owner of the property would be in proximity as he lived on an adjacent plot of land in a small studio. She also said she raised a question of whether the villa was private on three occasions prior to the booking and so this comprised a breach of contract. She says she wouldn't have booked the villa had she known these circumstances and this has impacted her holiday as a result.

I also see Ms G has referenced the PTR and said that the holiday would need to be as described. Ms G doesn't believe this has occurred and so NewDay are liable as a result. While I appreciate Ms G's reference to these regulations, ultimately Ms G considers the stay wasn't as promised. I've considered this under S75 in terms of whether there was a breach of contract to Ms G.

Before I go on, I'm also mindful there is an alternative remedy here under misrepresentation as Ms G has said she wouldn't have booked the accommodation had she have known of the adjacent property. Having considered Ms G's particular circumstances however, I think a consideration of breach of contract is most appropriate here with mind to the Consumer Credit Act 2015 (CRA) and particularly section 50 (S50) which I'll go into more detail later.

In terms of the complaint itself, I've broken down the key aspects as follows:

- *Ms G has said she wasn't aware that the owner would be living adjacent to the villa. I've reviewed the holiday booking confirmation, M's online terms and conditions as well as their description of the property on their website and note there isn't a reference to the owner living nearby. However I don't think this information would need to be included here as the owner was still situated off the villa premises and there isn't anything in the description to suggest that the villa was completely isolated, only that it's located on a hillside.*

- I've also given due consideration to Ms G's correspondence with M prior to the booking and the responses given. There is one particular question which I consider key here which is when Ms G asked for a confirmation that 'there is nothing next door to the property, or within the immediate area'. This should've prompted disclosure of the owner's property even if it wasn't on the premises themselves and it was just a small studio.

However M said 'there are properties nearby but not right next door as you can see from our map'. While its likely M is referencing the other larger properties in the area, they didn't consider the owner's property adjacent. I can't agree this answer was correct as they should've disclosed the owner's accommodation.

With consideration of the CRA and specifically S50, this does say:

"(1) Every contract to supply a service is to be treated as including as a term of the contract anything that is said or written to the consumer, by or on behalf of the trader, about the trader or the service, if—

- (a) it is taken into account by the consumer when deciding to enter into the contract, or
- (b) it is taken into account by the consumer when making any decision about the service after entering into the contract".

and under section 54 (S54):

(3)If the service does not conform to the contract, the consumer's rights (and the provisions about them and when they are available) are —

- (a)the right to require repeat performance (see section 55);
- (b)the right to a price reduction (see section 56).

So with this in mind, M's comments that there aren't properties next door would be treated as a term of the contract. And as this wasn't correct it would be reasonable to consider there was a breach here.

Under S54 this would then mean that Ms G would have the right to a price reduction by an 'appropriate amount'. I need to consider what reduction would be fair with mind to all the available evidence. There are two main considerations then regarding the impact of the owner's proximity and I've dealt with these in turn:

- Ms G highlighted that the owner did enter the villa grounds on occasion. M stated in response that the owner wouldn't have ventured onto the property when guests were staying but would be on hand with any maintenance issues should there be a need. However they accepted he did enter the property's laundry room to wash the linen for the initial changeover day for residents and likewise was on the property on occasion to maintain the grounds. One example was to mow the lawn in the evening which wasn't possible earlier in the day due to the higher temperatures.

I've considered whether this was reasonable and note that M's terms and conditions say the following under 'What should you expect from your accommodation':

'Maintenance and repairs may be undertaken from time to time. In order to keep properties up to standards, we require our staff may make regular health, safety and quality control checks so expect visits to the properties during your stay. If you do not wish to be disturbed, please discuss this with your representative'.

This would mean that Ms G should've expected staff on site to maintain the property and if she wished not to be disturbed, she needed to express this either to M or the owner. In this case the owner's attendance was to maintain the property as stated in the terms and I'm not aware of Ms G sharing her concerns with him or M during the period of her stay.

Ms G did say she sent a phone message to her representative as soon as she became aware of the owner. I can't see she then made them aware of her need for complete privacy during her stay.

Had she done so, I can't see why any required maintenance wouldn't have occurred around Ms G's requirements (such as taking place when she was off site). Therefore I can't agree that the owner's presence on site itself was a breach of contract.

I note Ms G has said that if she knew there would be people nearby she would've booked a hotel at a fraction of the price. However the terms do make clear that staff may attend on occasion but if this was a key issue, it should've also been raised prior to booking. And as mentioned, even after commencing her stay she should've spoken to her representative about her needs so they could try and accommodate them.

- *Ms G also mentioned the owner had guests in his adjacent property and their conversations proved disruptive. M said in response that the owner knew of the importance of his guests being discreet, which he rarely has and in fact most of the villa guests usually aren't aware of his presence at all. M also said they've not received any feedback in the past like the ones Ms G has raised about this issue.*

I've reviewed Ms G's comments and she says she heard the owner on the phone every day and also had guests over on occasion. I've not seen any more detail on the volume of these conversations or the length so it's hard to ascertain the reasonable level of disruption. In addition due to the property being adjacent on one side and behind foliage, the noise should only have been discernible on one side of the villa near this property.

I also see that Ms G said she was out for most days due to the presence of the owner but then that raises a question on how she knew that the owner would've disturbed her. The suggestion is that it was inevitable but we know he seldom attended to maintain the villa or had guests and I've insufficient evidence he was on the phone for a substantial amount of time.

I don't discount that Ms G wished for privacy and the owner's presence impacted her holiday as this wasn't what she expected. But I do have to consider the reasonable impact of this to determine the appropriate refund.

With mind to the cost including flights and a hire car, I'd consider the price reduction would be on the villa costs only. While I don't have the exact figure for this, and while I appreciate Ms G is claiming for her full costs back (which I don't think is proportionate), I do think a reduction of £500 is appropriate for the breach of contract and the resultant impact.

I know Ms G has said the impact was substantial but with consideration of the evidence available, I can't agree that more is due. The owner was entitled to attend the property to maintain it and I can't see why he wouldn't have arranged for privacy if told per the terms and conditions.

Likewise I've insufficient evidence that the proximity of his studio would've disrupted the stay to a significant level – but the reduction in price is factoring in that Ms G didn't expect this and did hear some conversations on occasion.

I see M has attempted to address the issue by offering a refund in its correspondence to Ms G, firstly with £300 in July 2023, then £350 in August 2023 and then finally £500 in November 2023.

With mind to my above comments I do think this final offer is fair and I must also note that Ms G did stay for her two full weeks at the villa. I know she said she couldn't find alternative accommodation but at the same time, I can't see any concerns were raised with M or the owner in the meantime, which would've been reasonable to mitigate the impact.

I also see from Ms G's complaint form that she feels NewDay took too long to investigate her S75 claim. She says she first contacted NewDay on 31 January 2024 and it took until 19 June 2024 to reach an outcome. However this comprised of both the original S75 claim investigation and then her subsequent complaint about the outcome.

NewDay's S75 outcome was communicated on 19 March 2024 which wouldn't have been an unreasonable time from the date the claim was raised on 31 January 2024. And likewise Ms G says she raised the complaint regarding this on 30 April 2024. The complaint outcome was then on 19 June 2024 – we'd expect this to occur within eight weeks of a complaint raised and this happened here. So I can't agree that NewDay need do anything more here.

Putting things right

If Ms G accepts my decision NewDay should check if M's offer of £500 compensation is still valid and if so facilitate the payment of this to her. However, in the event of issues with the offer or any delays by M in actioning it NewDay should pay the £500 to Ms G itself. And in any event NewDay should see that Ms G has the £500 paid to her within 30 days of accepting my decision. For clarity my direction isn't that Ms G receives £500 from both NewDay and from M and NewDay will be free to inform M if it ends up paying Ms G directly in order to avoid double recovery”.

NewDay didn't provide any further submissions however Ms G did have a few further comments. I have addressed this below and responded to the matters that I consider pertinent to the complaint.

- Ms G asked why the remedy for breach of contract was considered under S75 here rather than misrepresentation. For clarity, I've considered both misrepresentation and the rights the CRA affords under S50. However, as I don't consider the remedies available under misrepresentation, for Ms G's particular circumstances, would've been any better than under S50 of the CRA, I don't feel a need to expand on whether a misrepresentation has occurred. In other words, even if I'd agreed a misrepresentation occurred - my recommendations wouldn't be any different.

- Ms G has said that when she initially contacted NewDay in January 2024, she only requested a S75 claim and not a chargeback claim. While this may have been the case, we'd expect a business to pursue all relevant channels to attain redress for the consumer. In this case the chargeback claim was out of time regardless.
- In terms of my comments regarding NewDay's responsibilities, this is simply clarifying they aren't the provider of the services complained about and therefore I can only look at their responsibilities as the provider of financial services. I've then expanded on this in my findings.
- I appreciate Ms G has commented again on the proximity of the owner and that they considered them to be on site and they weren't made aware of his presence. I've covered this off in my provisional decision and have nothing further to add here beyond my previous findings on this matter.
- Ms G has also asked why the property description didn't need to include information of the proximity of the owner. While I note she believed they were on the premises. M has commented it was also an adjacent plot of land. M has also said that this hasn't been an issue with previous tenants. Therefore I can't comment further on the necessity of this being included in the property description.

Regardless, I've noted in my provisional decision that Ms G wasn't informed of this following her queries and what this meant for her S75 claim.

- Ms G has provided further comments relating to the owner's presence on the property and why they didn't complain about it during the holiday. While I do appreciate this, I don't have anything further to add here beyond my previous findings on the matter.
- Ms G has also provided comments on the length and volume of the conversations that the owner was involved in which she says disrupted her holiday and that she could 'hear him all the time'. She also has expressed the impact this had on her as a result. I do appreciate what Miss G has said, but I've considered all the available evidence in reaching my findings and have nothing more here.
- Ms G also commented on the fact she stayed two weeks in the villa as there weren't alternatives available. I do appreciate this and the circumstances but this doesn't change my findings.

Likewise Ms G has asked why the flight and hire car weren't considered in the price reduction. While I appreciate her position, the issues were specific to the villa and she should've still had enjoyment of the activities outside this accommodation. The flights and car hire were transportation tied to this and so I don't think a further price reduction is appropriate beyond the one here.

- I also appreciate Ms G's comments that Newday offered £50 compensation prior for previous errors. I acknowledged this in my provisional decision but I can't say this has any further bearing on the outcome reached. I also think this offer is appropriate to address what happened.

- Ms G has asked how the £500 figure was reached in terms of what was appropriate as a refund here. There wouldn't be an exact science when it comes to price reductions but what is felt to be fairest with all the evidence in mind. I do appreciate Ms G hasn't accepted this and considers the full refund is fair. However my provisional decision has set out why I've reached these conclusions.

I know this'll be disappointing to Ms G but I remain of the same conclusions and so my direction to NewDay remains the same.

My final decision

I direct NewDay Ltd to arrange payment of £500 compensation to Ms G in accordance with my direction above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 11 July 2025.

Viral Patel
Ombudsman