

## **The complaint**

Miss R complains about a claim she made to Capital One (Europe) plc (Capital One) in respect of a holiday resort not being as described.

## **What happened**

In April 2024, Miss R made a partial payment of £700 using her Capital One credit card for a packaged holiday which was to take place between 26 July and 5 August 2024. She booked the holiday through a travel agent who I'll call T. The total cost of the holiday was £4,179.10, which was split equally between Miss R and her friend (who she was travelling with).

Once Miss R arrived at the hotel, she was unhappy with the following not being as she expected:

- There were supposed to be two double beds in the room but there weren't
- There was no hair dryer
- There was no iron and ironing board
- The mini bar was broken
- The tea and coffee making facilities in the room were broken
- The phone in the room was broken so she couldn't use the 24-hour room service
- The safety deposit box was broken
- A leaking sink which was reported but not fixed
- Unable to access room due to a broken door and had to wait in this room whilst this was fixed so a theme night was missed
- One of the lights around the edge of the bed was not working
- A toilet not working
- The service received from T's representatives at the hotel was sub-standard

Miss R states she spent a total of 23 hours attempting to sort out repairs and more time waiting in her room for repairs. She missed entertainment and meals due to this. Miss R has also said that she has limited mobility due to health issues and some of these services were vital for her.

Miss R was offered another room on two occasions, so she stayed in a total of three rooms at the hotel. She experienced different issues in each of the three rooms. Miss R was offered a free massage at the spa at the hotel as an apology which she accepted. On her return from the holiday, Miss R raised her concerns with T and has said the merchant treated her

complaint as feedback. Miss R was eventually offered £100 by T but it eventually stopped communicating with her about the complaint and failed to make this payment to her.

Miss R brought her payment dispute to Capital One. When she completed the dispute form, she indicated she is claiming back the £700 that she paid on the credit card she held with it.

Capital One said it did not have chargeback rights for this transaction as Miss R went on the holiday and used the services paid for. Capital One then reviewed the claim under Section 75 of the Consumer Credit Act 1974 (Section 75) and said it thought it was fair for Miss R to receive a refund of around 15% of the cost of the hotel (£161.75). As Miss R was receiving a refund of £100 from T, Capital One offered £61.75.

Miss R responded and said T had not made payment to her and so Capital One increased the offered amount to £161.75. Capital One also sent Miss R a letter which could have been clearer, so it paid her £20 into her account to apologise for this.

Miss R remained unhappy, so she brought her complaint to our service. Our investigator reviewed what had happened and said that although Miss R was not the lead passenger on the booking, he thought T can be held liable to the traveller for the performance of the travel services booked under The Package Travel and Linked Travel Arrangement Regulations 2018 (PTR's). The investigator therefore concluded that there was a relevant debtor-creditor-supplier relationship and a claim under Section 75 could be considered.

The investigator further said some of the things Miss R is claiming for cannot be evidenced. However, he could see Miss R had been logging some concerns and found that based on the evidence available she would have suffered some loss of enjoyment on this holiday. Our investigator calculated the cost of the hotel slightly differently to Capital One but overall felt that even if he increased the refund to 20% of the cost of the hotel it came to the around the same amount as that which had offered by Capital One. So overall, he felt Capital One has treated Miss R fairly when considering her claim.

Miss R disagreed with this outcome. She asked for an ombudsman to consider her complaint and raised the following concerns:

- Due to her health conditions Miss R experiences chronic pain and fatigue which means she could not always make it to the dining hall. Not having a working coffee machine, fridge or room service available to her affected her on days like this.
- The hotel was hiring third party repair staff and so guests were required to stay in their rooms whilst repairs were being made.
- Miss R had issues with her return flight.
- Miss R spent time, effort and money on taxi fare to see her friend when attempting to deal with the claim and complaint. She does not feel the £20 paid by Capital One reflects the distress and inconvenience it put her through.

I issued a provisional decision in which I said the following:

***What I've provisionally 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 would like to start by saying that I have provided a brief summary of the events that occurred above. I want to assure both parties that I have taken all the information provided into consideration when reaching a decision on this complaint.*

*In this decision, I'll concentrate on what I think is relevant. If I don't comment on a specific concern, it's not because I've failed to consider it, but because I don't think I need to comment in order to reach a fair and reasonable outcome. Our rules allow me to do this, and this reflects how we function as a free and informal alternative to the courts.*

*I also think it's worth clarifying that I'm deciding whether Capital One acted fairly in assisting Miss R with her dispute against T. I'm not making a finding on the underlying dispute Miss R has with T. When considering what's fair and reasonable, I'm only considering whether Capital One acted in line with its obligations as a provider of financial services.*

### Chargeback

*Chargeback is a voluntary scheme under which settlement disputes are resolved between card issuers and merchants, under the relevant card scheme. A card issuer will review the claim against the possible reasons for a chargeback and look at whether it would be able to make a successful claim for the customer. Card issuers do not have to submit claims and usually will only do so, if it is likely to be successful. We don't expect them to raise a claim if there is little prospect of success.*

*Capital One considered whether to raise a chargeback and ultimately decided not to as the service had been used. As Miss R went on the holiday and stayed for the duration of the holiday, I find it unlikely that any dispute raised would have been successful for the same reasons. I understand Miss R was upset about a chargeback not having been pursued and believes she was advised incorrectly about this however, as mentioned above, a finance provider is not obligated to raise a chargeback if it finds it has low prospects of success so I am not minded to find that Capital One treated Miss R unfairly when dealing with this part of her claim.*

### Section 75

*Section 75 of the CCA allows – in certain circumstances - for a creditor (Capital One) to be jointly and severally liable for any claim by the debtor (Miss R) of breach of contract or misrepresentation made by a supplier of goods and/or services (T). Both Capital One and Miss R accept that this was a package holiday arranged through T, and under The PTR's, T is contractually liable to Miss R for performance of the travel services. Our investigator explained why in detail, and I agree with what he said. In the absence of any objection to those findings, I will move on to consider the claim.*

*It is clear, and neither party is disputing that the contract was breached. T provided a list of amenities that Miss R expected to enjoy on her holiday and the reality she experienced at the hotel meant that some of those amenities were not available to her for some days, and in some cases, for the duration of the holiday. Miss R booked a holiday, the main object of which is relaxation and enjoyment. The experience she had fell somewhat short of her expectations and this would have affected her enjoyment of the holiday. I think it's also worth noting that T advertise the resort as 5-star and so there are associated expectations Miss R would have had when arranging a holiday at this resort. Having said that, I will consider the concerns Miss R had with the hotel in more detail below.*

*I can see the room Miss R booked was to be a "luxury junior". The room is advertised as being able to "sleep up to 3 people with a king-size bed or 2 double beds, and a sofa bed." Miss R also specially requested a ground room floor due to her mobility issues at the time of*

*booking. Miss R states when she first arrived at the hotel she was given a room with one double bed. She asked to change room and had to wait three hours for a new room to be made available to her. She states she missed dinner service during this time and when she was allocated a room, it was not on the ground floor. She was relocated to another room on the ground floor on the third day of her holiday.*

*Miss R has provided some evidence that this occurred, and I do not doubt her version of events. I am unable to see why Miss R could not get something to eat whilst she was awaiting a new room to be allocated to her as she had checked in to the hotel at this point. But I do accept this was not a comfortable start to her holiday, would have caused some inconvenience and she was not given a replacement room on the ground floor which would cause difficulty for Miss R. I also note that Miss R accepted a free massage from the hotel as an apology for this.*

*Miss R has not provided evidence of the following faults:*

- *There was no hair dryer*
- *There was no iron and ironing board*
- *The mini bar was broken*
- *The tea and coffee making facilities in the room were broken*
- *A toilet not working*

*If Miss R is asserting that a breach of her contract has occurred, then I would expect her to demonstrate any proposed breach. I would like to make clear that Miss R has been plausible and persuasive throughout the duration of her complaint, so I do not doubt her version of events, but rather have no evidence to support her claim the contract has been breached because of these faults. I have kept this in mind when considering an appropriate award. However, if Miss R can evidence these faults in response to this provisional decision, then I will consider this further.*

*Miss R has provided evidence of the following faults:*

- *The phone in the room was broken so she couldn't use the 24-hour room service*
- *The safety deposit box was broken*
- *A leaking sink which was reported but not fixed*
- *Unable to access room due to a broken door and had to wait in this room whilst this was fixed so a theme night was missed*
- *One of the lights around the edge of the bed was not working*

*Miss R tells us she was without a working phone for two days and could not use room service during this time. I think this would have affected her greatly as she has explained she has mobility issues and cannot always go to the dining hall. To not be able to order room service would have been a real inconvenience to her than to others due to her increased need to stay in her room.*

*Miss R has not confirmed how long the safety deposit box in the room was broken for. I appreciate that with third party contractors coming to the room constantly during her stay to*

conduct repairs, not being able to store valuables away safely would cause concern. Miss R has demonstrated the issue with the door and that repair took several hours for which she had to wait in her room, missing a theme night. This would have caused her loss of enjoyment. Miss R has also provided evidence of asking for a repair of a leaking sink which took two days to repair, and this is something a reasonable person would not expect to experience in their hotel room. Lastly, Miss R has shown us that one of the lights around the edge of the bed was not working. I understand Miss R feels this did not fit in with the "luxury experience" she was expecting.

Overall, I accept that Miss R has demonstrated that she experienced a host of issues that aren't what anyone would expect of a 5-star resort. Most concerning was the room not being on the ground floor for two days and the lack of room service due to a broken phone for the same amount of time – mainly due to Miss R's mobility issues and the disproportionate impact on her.

There are no tools that can help us calculate the likely loss to Miss R. Capital One has offered approximately 15% of the cost of the resort and made an offer of £161.75, whilst Miss R is asking for considerably more. What constitutes suitable compensation needs to take account of the extent to which Miss R lost out on the relaxation and enjoyment that was the object of the holiday, while recognising that the package itself included aspects that were not impaired, such as the flights and other hotel amenities that were available for Miss R to use. Miss R did state that she had issues with her return flight but has not provided more information about this when requested so I have not considered that matter further. I have considered Miss R's request for a higher refund at length but am not persuaded that she should be entitled to more than a reasonable fraction of the money back for these reasons.

I can see that both Capital One and our investigator have calculated the cost of the hotel differently but have ended up at the same amount. Having thought carefully about all of the above, I'm minded to propose that Capital One pay Miss R £630. This comes closer to 30% of Miss R's half of the overall contract price. I consider this a fairer amount and an appropriate sum to reflect the breach of contract, the overall holiday experience and its impact on Miss R. I appreciate this is a departure from how the parties before me have looked at resolving the complaint, however I am not persuaded by how the calculations have been made thus far and find a fraction of the total cost to be a fairer amount to pay.

#### Customer service

Miss R has raised concerns about the service received from Capital One during the course of her claim and the additional expenses she incurred when attempting to handle the matter. I have reviewed the claim history and can see Miss R was sent a letter in October 2024 in which the claim was declined, followed by another letter a few days later making an offer. I find this would have been confusing and disappointing for Miss R however it was rectified relatively quickly and so I find the £20 already offered and paid by Capital One to be a reasonable amount to apologise for this error. I have not found any further errors in service that would have caused distress. I appreciate Miss R is concerned about the time, effort and taxi costs she has paid towards raising and looking into the claim however this is not something I have considered making an award for on this occasion as I do not find it reasonable to do so.

Capital One agreed with my provisional decision. Miss R also agreed however, she provided the following information for further consideration:

- Details of the issue she had on her return flight to the UK
- Miss R explained that she has not sent us evidence of some of the missing or broken

items because the issues were not visible (such as the broken fridge)

- Miss R explained she was unable to get dinner the first night whilst waiting for a room as she still had her luggage with her and was not given a hotel wristband granting her entry to food areas until she had accepted a room
- Miss R was unhappy with the service received as she was not telephoned directly regarding her claim, especially because she has reasonable adjustment needs

### **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.

Having done so, I have reached the same outcome and for the same reasons as those outlined in my provisional decision. I will address the further points raised by Miss R in more detail below.

Miss R has said that she received poor service on the return flight. She started to feel chronic pain an hour into her return flight and spoke to a flight attendant who said she would find her a seat with more leg room then either ignored her or said she had to pay for a seat with more leg room, which she could not afford to do. I am conscious that Capital One has not had a chance to address this issue, but I am aware of Miss R's health and do not wish to prolong this matter for her any longer, so I will address this concern in this decision.

I have reviewed T's terms and conditions which relate to assisted travel. It makes clear that any disability or needs should be communicated to T's assisted travel team in advance of the trip. The terms also make clear that should extra space be required, customers will have to pay for it. It therefore seems to me, that T were not required to give Miss R a seat with more leg room unless she paid for it and that is made clear in the terms. It is also consistent with what Miss R was told when she called T before she departed on her holiday. So, I do not find that the contract was breached for this reason. I understand Miss R was unhappy with the behaviour of the flight attendant, however this is not something I can hold Capital One liable for under Section 75.

I understand and appreciate why Miss R has said she has not been able to evidence some of the issues. I will re-iterate that Miss R has been plausible and persuasive in her testimony and I do not doubt that these things were missing or broken but rather came to the conclusion that the strength of the breach of contract was called in to question without appropriate supporting evidence. This was taken into account to a reasonable extent when reaching my outcome in the provisional decision.

I thank Miss R for her explanation of why she was unable to get some dinner when she was waiting for a new room when checking in to the hotel. This has helped me get a clearer picture of what happened that first day. I find the amount already awarded to be reasonable to compensate for what happened here.

Miss R was unhappy that she was not called regarding her claim. I can see in her complaint letter that she confirms having received a call stating her claim would be passed to the Section 75 team, so she likely had an opportunity to provide further information at this time. I can also see that she later said she hadn't received any phone calls before her claim was rejected. It seems that she was looking to discuss her claim before an outcome was reached so she could provide more information in a way which suits her. It is not clear to what extent Capital One was already aware of Miss R's needs but as far as I can see, all communication from Capital One was clear and concise. One letter was sent rejecting the claim followed by

another upholding it, and this has been compensated for. I can see Miss R said she didn't receive a phone call but didn't say why she needs one and it seems that Miss R was given opportunities to provide information as required. It was also possible for her to phone Capital One as needed. I therefore see no reason to increase what Capital One has already paid Miss R for service issues.

### **My final decision**

I uphold this complaint and direct Capital One (Europe) plc to pay Miss R £630 for the reasons set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 23 September 2025.

Vanisha Patel  
**Ombudsman**