

## **The complaint**

Mrs G complains that Lloyds Bank PLC trading as MBNA hasn't refunded payments she made towards a package holiday.

## **What happened**

Mrs G booked a two week package holiday for her and her husband which included flights and accommodation at a holiday resort. The total cost of the package holiday was £21,965.84. Mrs G says that £8,000 of the cost was paid for by a third party as a gift and she and her husband paid the remaining amount, £8,500 of which was paid using Mrs G's Lloyds credit card.

Mrs G says that there was a breach of contract and/or misrepresentation by the package holiday provider. She says there were numerous issues which spoiled their trip. In summary, some of those issues were:

### In relation to the resort

- General cleanliness and state of repair of their room, balcony and the communal pool area.
- Availability of the restaurants as well as the overall standard and availability of food.
- The quality of the personal butler service, for example, they say they were lied to repeatedly by one of the butlers.
- They were restricted access to the communal pool on two mornings.
- A bird nest outside their room was disturbed by staff causing the bird to become distressed during their stay.

### In relation to the flights

- The quality of the seating.
- The availability and quality of the food and drinks.
- On one flight the upper class restroom was out of order meaning they had to use the toilets in premium economy.

Mrs G approached the package travel provider, the airline and the resort for compensation. The airline and resort offered her loyalty rewards points as a gesture of goodwill. The package travel provider offered a refund equivalent to one night stay at the resort to the amount of £1,177.85. Mrs G says she declined all of these offers as she was seeking a refund of 50% of the total cost of the holiday.

Mrs G approached Lloyds for help in getting a refund. She raised a claim under section 75 of the Consumer Credit Act 1974 ("section 75"). Lloyds said that it didn't think it could provide a fair outcome under section 75 given the subjective nature of Mrs G's concerns. Lloyds said it would cover the cost of Mrs G raising a claim with ABTA. It said that once ABTA had reviewed matters, it would be prepared to take its findings into account when deciding what liability Lloyds might have under section 75. Mrs G complained about Lloyds' unwillingness to consider her claim under section 75. She said there was no requirement on her to go to

ABTA first.

Lloyds didn't uphold that complaint and said it was satisfied it had dealt with her claim and complaint fairly. Mrs G then referred her complaint to this service.

Our investigator recommended the complaint be upheld. She didn't think Lloyds' response to Mrs G's section 75 claim was fair. She considered that Lloyds ought to have reviewed the claim and not insisted Mrs G seek an opinion from ABTA first. She recommended Lloyds pay £100 compensation for the upset and inconvenience it caused.

She was persuaded that Mrs G had provided sufficient evidence to demonstrate there had likely been a breach of contract by the package travel provider, for which Lloyds could be held jointly liable for under section 75. She considered that a refund of 15% of what Mrs G had paid (excluding the £8,000 that someone else paid) would be a fair and reasonable way to put things right.

Lloyds accepted that outcome, but Mrs G didn't. In summary, she said the investigator had not adequately explained how they had arrived at a figure of 15% and did not itemise how each separate breach of contract or misrepresentation equated to a set amount of refund. She didn't think the £100 compensation was a fair reflection of Lloyds' failures in dealing with her section 75 claim.

As there was no agreement, the complaint has been referred to me for a final decision.

### **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.

The general effect of section 75 is that if Mrs G has a claim for breach of contract or misrepresentation, she can bring a like claim against Lloyds, as the provider of credit. There are other requirements that also need to be satisfied, but for completeness, I think those are met here.

In deciding what is fair and reasonable in the circumstances of this complaint, I've taken into account section 75, as well the Consumer Rights Act 2015 and The Package Travel and Linked Travel Arrangements Regulations 2018.

Mrs G has provided a detailed account of the various breaches of contract and misrepresentations she says were made by the package travel provider. She has also provided several videos and photographs taken during her holiday which she says show evidence of the problems they faced.

I think it's relevant context to this dispute to highlight that within the first few days of Mrs G's stay at the resort, the resort (and the entire island it was situated on) was hit by a category 4 hurricane. A category 4 hurricane is described as one which is likely to cause catastrophic damage.

Fortunately, it seems from what Mrs G has described that the resort did not suffer significant damage during the hurricane. However, given that she has complained of dirty lounge chairs and broken tables near the communal pool as well as some loose decking, and the only video and photo evidence she has of this is after the hurricane struck, I think it's likely it is the hurricane that may have caused this damage. A natural disaster such as a hurricane is one which is clearly outside of the package travel providers control and the relevant regulations highlight that in unavoidable and extraordinary circumstances it is unlikely to be

liable to provide compensation.

But even if these items were in such a state of repair prior to the hurricane, I've not seen anything to suggest they were unusable, although I accept their general condition wasn't to the standard Mrs G ought to have expected given the description and price attached to the holiday.

Damage on Mrs G's balcony such as loose bird spikes, resulting in screws falling to her balcony, were clearly caused by the hurricane. Mrs G appears to accept this too. While Mrs G's husband then took it upon himself to clean the balcony, I'm not persuaded this means there was a breach of contract. The damage was caused by the hurricane and due to the impact of the hurricane on the island, I understand the resort was short staffed for a number of days. So, any delay in repairing and cleaning these outdoor areas I think were as a result of extraordinary circumstances.

I understand the shower in Mrs G's room was broken and this was fixed once it was reported. I've also seen videos and photos of one of the balcony doors being difficult to close. There was a missing bath plug, as well as issues with cleanliness in the bath, shower and on a rug. Given the description of the room and the price paid, I agree with Mrs G that the overall state of repair and cleanliness of the inside of the room was not what would be expected and that this likely amounted to a breach of contract.

Mrs G has also complained about the standard of the food and restaurants on offer. She has provided documentation which says the resort has "*10 world-class restaurants*" and that there is "*unlimited fine dining*" at these 10 restaurants. She has also provided the restaurant opening schedule taken at the resort which shows that the restaurants were not all open at all times every day. Further, she says table availability at some restaurants was occasionally limited. She says this was a misrepresentation as the dining was not world-class nor unlimited. However, I don't agree there was a misrepresentation or that even if there was, that Mrs G has suffered any material loss.

None of the literature says the restaurants are open 24 hours a day or that there would be guaranteed seating available and the unlimited nature of the promise is vague and could reasonably be referring to the amount of food that can be eaten there. Further, the term world-class is subjective as different people can take a different view as to what standard that might be expected to be. Further, I have no way of being able to verify one way or another what the quality of the food was like, all I have is Mrs G and her husband's own subjective view, which could be substantially different to other guests.

I note that Mrs G has also said that much of the food offering was not to their taste, both at the resort and on the flight. She says that her and her husband only eat plain food and as such they had no interest in many of the speciality restaurants that offered different cuisine. Therefore, even if I could be persuaded there had been a misrepresentation regarding the quality and availability of the restaurants, I fail to see how this had any material impact on Mrs G's and her husband's enjoyment of the holiday when by their own admission much of the food was not to their taste anyway and they had no interest in visiting certain restaurants because of their specific dietary preferences.

Mrs G also complained about the service received from some of the butlers and that one of them lied to them as well as an issue where a bird's nest was disturbed outside their room. However, I've not been presented with persuasive enough evidence to demonstrate there was likely a breach of contract created with either event. I don't have any evidence other than what Mrs G has described relating to the specific incident with the butler and it isn't clear whether the vet that disturbed the nest was even an employee of the resort. Further, even if what Mrs G says is true relating to the butler, I understand the resort provided a

different butler for them after it was requested, which I think was a fair way to redress that specific complaint she had.

In relation to the flights, I've not been presented with anything other than Mrs G's explanation of what went wrong. Much like her complaint about the food at the resort, I see no reason to conclude that the food offering on the plane amounted to a breach of contract or misrepresentation. However, the airline itself does appear to have accepted that some of the issues (although it's not clear which ones specifically) were not at the required standard and offered some redress for that by way of loyalty points. So, on balance, I'm inclined to accept there was a breach of contract in relation to the flights in that some of the amenities were not provided at the expected standard.

Overall, I'm persuaded there were issues with Mrs G's room at the resort concerning the general cleanliness and state of repair. Also, I'm satisfied there were some issues with the flights in terms of the amenities provided. I'm not persuaded that there was a breach of contract or misrepresentation concerning the food, or any damage at the resort as a result of the hurricane.

While I accept there were some issues that could amount to a breach of contract and/or misrepresentation for various parts of the package holiday, I don't agree with Mrs G that a refund of 50% of the cost of the holiday is fair or reasonable.

There isn't a formula for working out what a fair remedy ought to be. Apart from being able to separate out the costs of the flights and accommodation, there is no set price for each of the issues Mrs G has complained about. It isn't therefore possible (or reasonable) for me to try and provide a specific cost to each and every issue Mrs G experienced. Instead, I've taken an overall view of all the circumstances to help me decide what I think is a fair and reasonable refund to compensate Mrs G for any breach of contract or misrepresentation that might have occurred.

Mrs G and her husband received their flights and they stayed at the resort for the full 14 days. They also had access to and use of all of the available amenities for the majority of their stay (although I accept there was some issues here such as access to the pool on two mornings and the broken shower). So, I'm satisfied that they received the majority of the contract they paid for, which is why my starting point is that any refund ought to be modest and significantly less than the 50% Mrs G is seeking.

I do accept there were some issues with the overall quality of the package holiday provided and this did undoubtedly cause upset to Mrs G and her husband and spoil their enjoyment of the holiday to some degree. I've also factored in that a significant part of the upset Mrs G has highlighted relate to things I don't consider to have been a breach of contract or misrepresentation, such as the issues concerning the food or damage that could have been caused by the hurricane. Therefore, not all of the upset she and her husband experienced while on holiday I don't think Lloyds needed to take into consideration when assessing the section 75 claim.

Taking all the circumstances into account, I'm satisfied that a refund of 15% of what Mrs G paid is a fair and reasonable way to put right any breach of contract or misrepresentation. This 15% should be a refund of what Mrs G paid towards the holiday as this represents her loss. The £8,000 that was paid by a third party is not costs that Mrs G incurred so I don't think it would be fair and reasonable for Lloyds to account for financial losses she didn't suffer. In reaching my conclusion on what a proportionate refund ought to be, I've taken into account that the refund represents just less than the cost of two full nights stay at the resort. Given what Mrs G and her husband received compared to what went wrong, I think this is a reasonable and proportionate remedy for the issues that they faced.

Lastly, I don't consider Lloyds' response to Mrs G's section 75 claim to have been helpful. It effectively decided it wasn't going to provide a response unless Mrs G went to ABTA first. Lloyds was responsible for dealing with the section 75 claim regardless of whether Mrs G had been to ABTA or not. I can see this response caused frustration, upset and inconvenience to Mrs G. However, I consider the £100 compensation suggested by the investigator for Lloyds' poor handling of the section 75 claim to be fair and reasonable to put right that error.

I say this because a section 75 claim is a claim against Lloyds. It is not the same as a complaint about something Lloyds has done. Lloyds were required to assess whether it might have liability towards Mrs G and it was entitled to defend its position if it didn't think it did. So just because Lloyds didn't agree to refund Mrs G, it doesn't mean it should compensate her for any upset that decision may have caused.

It was entitled to reach a view that it had no liability under section 75. However, in this specific case, it didn't adequately explain to Mrs G why it was asking her to take the steps that it did. It has later told this service that it was because without the ABTA report it was unlikely to uphold her section 75 claim. I can't see this was made sufficiently clear to Mrs G. This caused unnecessary friction in the claim process which could have been avoided. So, I think a payment of £100 compensation for upset and inconvenience that communication caused is a fair way to put things right.

I think even if Lloyds had considered the claim further at that stage, it seems unlikely it would have agreed with Mrs G anyway. I therefore don't think anything would have been resolved any quicker, but I accept some of Mrs G's communications with Lloyds may not have needed to have happened had it responded appropriately from the outset. This is why I consider £100 to be fair in these circumstances as while it ought to have explained things better, I don't think it made any material difference to the speed of resolution or overall outcome of Mrs G's claim and complaint.

### **My final decision**

For the reasons given above, I uphold this complaint and direct Lloyds Bank PLC trading as MBNA to:

- Refund £2,094.87, representing a 15% price reduction on what Mrs G paid towards the full cost of the package holiday.
- Lloyds should re-work the credit card so that the refund is applied from the date of payment. Any re-work should take into account any refund of interest, fees or charges that were applied to that amount. At the point Mrs G paid off the refunded amount from her credit card, Lloyds should pay her an additional 8% simple interest per year, from the date it was paid off to the date of settlement.
- Pay £100 compensation for any distress and inconvenience caused by the way it handled the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 27 October 2025.

Tero Hiltunen  
**Ombudsman**