

The complaint

Mr C complains that NewDay Ltd trading as John Lewis Credit Card (NewDay) hasn't refunded him for a hotel room he paid for using his credit card account.

What happened

In April 2025, Mr C made a booking for a hotel room via a booking agent I'll refer to as "E". He paid for the purchase using his NewDay credit card.

Mr C says the room didn't have air conditioning (AC), it wasn't clean, had a mouldy bathroom and non-functional ventilation. As a result, he felt that a misrepresentation had occurred.

Mr C says he complained to the hotel manager and to E, but he wasn't able to resolve the matter and so he approached NewDay. He says he initially received a refund, but on 8 July, the charge was reapplied as the chargeback claim NewDay processed for him hadn't been successful.

Mr C felt he had a valid claim under Section 75 of the Consumer Credit Act ("Section 75"), as NewDay are jointly liable for a breach in contract or misrepresentation. He adds that NewDay hasn't considered Consumer Duty, as it has caused him foreseeable harm.

Mr C says that the result of all of this is that he is £1,078.05 out of pocket, and he has had to use his savings and as such has lost out on interest. He says that this is a financial hardship and an unplanned expense. He adds that NewDay has messed him around; despite him letting it know that he is a vulnerable customer.

NewDay responded to Mr C's complaint, but it didn't think it had done anything wrong in relation to how it handled the chargeback claim. However, it paid Mr C £25 because it didn't provide Mr C with a detailed explanation as to its decision.

An Investigator considered the evidence provided by the parties, but they didn't uphold Mr C's complaint. They explained that it wasn't unreasonable of NewDay to not have continued with the chargeback dispute because it had little prospect of success. The Investigator also considered Section 75, as NewDay didn't appear to have done this. They felt that there had been a misrepresentation in the way the hotel had been advertised – that's because the room was advertised as having AC, when the evidence shows that this wasn't working. The Investigator said they weren't persuaded Mr C entered into the contract because the room had AC but felt that the lack of AC would have impacted his stay – therefore they felt that NewDay should remedy the breach by paying Mr C 30% of the cost of the hotel.

Mr C says his complaint was misrepresented, and that his complaint is only about Section 75. I have summarised his other points below:

- AC was an important factor in him choosing the accommodation as he was travelling with a young child and his pregnant wife.

- The Investigator arrived at a determination using inference which leaves him, as a complainant in a worse position than a literal reading of the act.
- The Investigator's adjudication doesn't address the additional financial loss he suffered as a result of him having to use his savings to cover the cost of the purchase.

NewDay didn't respond to the Investigator's view; so I've assumed it doesn't dispute any of the Investigator's findings and it has nothing further to add.

Because an agreement couldn't be reached, the complaint has been passed to me to decide 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.

Having considered Mr C's concerns, I uphold his complaint.

As Mr C has confirmed his complaint is only about a Section 75 claim, I will focus my decision on this point. However, for completeness, I agree that NewDay handled the chargeback claim appropriately as the claim had little prospect of success when taking into account the strict MasterCard rules NewDay were required to adhere to.

It doesn't appear that NewDay considered Mr C's claim under Section 75. So I have thought about the likely outcome of a claim had it done this, based on the evidence it had been presented with.

Section 75 allows Mr C to make a claim against NewDay in respect of the goods he paid for using his credit card. However, for Section 75 to apply, certain criteria need to be satisfied relating to things like the parties to the transaction, the way the payment was made and the cost of the goods. I'm satisfied these things have been met; and so the claim could and should have been considered by NewDay.

For a Section 75 claim to be successful, there would need to be evidence of a possible breach of contract, or a misrepresentation. A breach of contract can be a breach of an "express" term of a contract – meaning something which is written into it. Or it can be a breach of what is usually referred to as an "implied" term, which is a term treated as being included in the contract due to, for example, legislation which says that it must be, like the Consumer Rights Act 2015 (CRA).

As I understand it, both the Investigator and Mr C has said that there was a misrepresentation in how the hotel was described. This is because the evidence provided by Mr C shows the hotel room was advertised as having AC; and I can see from his communication with the hotel staff that the AC wasn't working and couldn't be fixed.

I don't know if the AC wasn't working at the time Mr C made the booking, if it was, I wouldn't be able to find that a misrepresentation had occurred at all, and instead, should be considered as a breach in the implied terms of the contract.

That said, I am satisfied that either a misrepresentation occurred, or there was a breach in contract as a result of the AC not working. But it doesn't make a difference to the outcome of this particular complaint, whichever one occurred. I'll explain why below.

Where a misrepresentation occurs, I need to think about whether Mr C would have entered the contract regardless. Put simply, if Mr C had known there was no working AC at the hotel, would he have still gone ahead and booked the hotel. Mr C has explained that he wouldn't have – and has explained that this is because he was travelling with a young child and a pregnant wife. I can see that he also explained this to the hotel staff when he was communicating with it.

It is of course difficult to know what Mr C might have done in retrospect. But I'm minded accepting that I don't think it likely he would have gone ahead with the booking, and instead I think he would have booked a different hotel where there was working AC. I say this particularly in the circumstances Mr C has described – with his wife being pregnant and traveling with a young child – all of which he was aware of when he made the booking.

Where a misrepresentation occurs, and the complainant wouldn't likely have entered into the contract had it not been for the misrepresentation; the contract would usually be treated as being void and as though it never existed. However, while I am required to take into account relevant law and legislation; my remit is to come to what I consider to be a fair and reasonable outcome in all the circumstances of the complaint.

In this case, I don't think voiding the contract would be a fair or reasonable outcome. I say this because Mr C still had use of the hotel room. While I accept that his enjoyment of the hotel room was impacted by the AC not working – especially given that it appears to have been warm weather at the time Mr C visited; it wouldn't be reasonable in the circumstances that Mr C should get a full refund of the cost of the hotel. And I'm satisfied that the Investigator's view that a 30% price reduction is a fair and reasonable remedy to reflect loss of enjoyment.

Even if I were to find that there hadn't been a misrepresentation; I would still find that there had been a breach in the implied terms of the contract. I say this because the CRA implies a term of Mr C's contract with E that the service it provided would be carried out with "*reasonable care and skill*". Given that it would have been reasonable for Mr C to have expected that he would have *working* AC in his hotel room; I would consider this to be a breach in the implied terms of the contract. Where there has been a breach in contract, one of the available remedies is a price reduction, which I find to be the most appropriate in this case; and like I've explained, I think 30% is reasonable when taking into account Mr C's specific circumstances.

I have also thought about the other issues Mr C raised about the hotel – for example the bathroom having mould and poor ventilation. But these additional issues don't lead me to conclude that there should be any further reductions in the price of the hotel room.

Therefore, I'm satisfied that had NewDay considered this claim under Section 75, it ought to have found that there had either been a misrepresentation or a breach in contract. And therefore, it needs to take action to put things right for Mr C. However, I'm persuaded that the £25 NewDay has already paid Mr C is enough to compensate him for not explaining why his chargeback hadn't been successful.

I also note that Mr C has explained that NewDay didn't consider Consumer Duty when handling his claim; and that its actions caused him foreseeable harm. But I haven't seen any persuasive evidence to agree with his point. NewDay was required to process the chargeback within the strict rules set out by MasterCard; and while I can understand why Mr C would likely have been disappointed by NewDay refunding the cost of the hotel, and then re-adding it to his account, this is part of the normal chargeback process. And I can't fairly

find it has done anything wrong here.

Putting things right

- Rework Mr C's credit card account as though the hotel had cost 30% less from when he made the claim.
- NewDay should remove all interest, fees and charges added as a result of this sum.
- If it follows that the removal of the 30% would have resulted in a positive balance on Mr C's credit card, NewDay should then add 8% per annum simple interest to the amount overpaid from the date the claim was declined until the date of settlement.

If NewDay consider it is required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr C how much it has taken off. They should also give Mr C a tax deduction certificate if he asks for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

I note the investigator hadn't mentioned the 8% in their recommendation, but NewDay will be aware we would usually award interest when we uphold complaints, and where the complainant might have been deprived of the use of their money.

My final decision

For the reasons set out above, I uphold Mr C's complaint. I order NewDay Ltd trading as John Lewis Credit Card to put things right for Mr C by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 2 April 2026.

Sophie Wilkinson
Ombudsman