

## The complaint

Mr R has complained about the way NewDay Ltd trading as John Lewis Credit Card (“NewDay”) dealt with a claim for money back in relation to a cruise holiday he paid for with credit it provided.

## What happened

In April 2024, Mr R used his NewDay credit card to pay £5,290 for a cruise he’d booked through a merchant I’ll refer to as C. He also paid an additional amount of £419.19 for excursions also using his NewDay credit card. The cruise was to take place in July 2024.

The facts of the case are not disputed so I’ll only briefly set them out here. Mr R was not happy with the experience he had on the cruise and raised numerous complaints whilst on the cruise as well as contacting NewDay directly on his return. He felt a number of issues were misrepresented to him including the available dining facilities, the standard of food, and statements made regarding the voyage itinerary as well as issues with the booked shore excursions.

Mr R initially raised his concerns with the merchant who offered him £900 compensation for the issues raised. It offered £650 for Mr R’s concerns over the dining facilities and food quality, as well as £250 for concerns over the excursions and itinerary. The offer does mention refunds for two of the excursions Mr R’s partner couldn’t attend due to ill health and 70% refund of one of the excursions Mr R wasn’t happy with.

Mr R made a counteroffer saying he would be happy to accept the refund of the excursions offered, plus £900 compensation, but he wanted an additional £300 (so a total of £1,200) to settle the matter in full. Mr R was clear that his counteroffer was for a temporary period. C refused this offer saying the £900 was the full amount it would be willing to offer and if he remained unhappy, he would need to contact the Association of British Travel Agents.

Unhappy with this, Mr R raised a claim against NewDay under section 75 of the Consumer Credit Act 1974 (section 75). Mr R did mention making a chargeback claim under section 75 in his complaint letter. He wanted a refund of £2,528.65 which included £2,205 compensation for the alleged misrepresentation in relation to the cruise itself, as well as £323.65 for shore excursions he wasn’t happy with.

NewDay provided Mr R with a temporary refund of £2,528.65 and raised a chargeback on behalf of Mr R but this was defended by C due to the offers it had already made. So NewDay re-applied the amount to his account one day after informing of its decision to do so. It also considered Mr R’s claim under section 75 but declined it on the grounds that there was no evidence of a breach of contract and C had made reasonable offers in response to his claims.

Mr R was unhappy with this response and raised a complaint. In addition to his earlier concerns, he remained unhappy that it took NewDay three months to process a chargeback claim that he’d never requested, delaying the consideration of his section 75 claim, and he didn’t think its answer to his section 75 claim was in any event correct. NewDay issued a

final response on 1 April 2025, explaining it followed the correct process in relation to the chargeback and explained its process, so it had made no errors in this regard. It also agreed that there wasn't sufficient evidence of a breach of contract, and that C had made reasonable offers in relation to his misrepresentation claims. In order to bring matters to a resolution, NewDay credited his account with £300 as a gesture of goodwill (GOGW). This would take the full amount of compensation offered by NewDay and C to £1,200 as requested by Mr R.

Mr R decided to refer his complaint to the Financial Ombudsman. He re-iterated that his offer to settle the complaint for £1,200 compensation was temporary and he wasn't now bound to accept it. He wanted NewDay to offer the full £2,528.65 he had claimed.

Our investigator looked into things and felt that NewDay hadn't acted incorrectly by considering a chargeback claim first and had reached a fair answer to that claim. He also felt the £900 offered by C in conjunction with the £300 offered by NewDay was also fair in relation to his section 75 claim and he didn't recommend NewDay to pay any further amounts. He felt some of Mr R's claims were subjective and couldn't be evidence such as the standard of food offered by C.

Mr R remained unhappy for the following reasons:

- Chargeback - he was unhappy NewDay reversed the credit made to his account before looking into his complaint about the issue. He also wasn't notified that the chargeback claim would be attempted through the Mastercard scheme rather than under section 75 which delayed the consideration of his section 75 claim. He felt the service received from NewDay was poor.
- He felt there was ample evidence of his claim regarding the standard of food, dining facilities, the voyage itinerary and shore excursions. There were statements of facts in them that turned out to be untrue and had induced him into the contract. He provided evidence of the booking forms, brochures and pamphlets to support his claims.
- Mr R's statements regarding the food quality was based on his experience of cruises on two other cruises where the food standard was significantly better.
- C had offered to refund the \$114 for the excursions his partner couldn't go on and offered 75% of the costs of the excursion they weren't happy with. He'd accepted this offer and wanted NewDay to honour C's offer to refund this.
- He added NewDay's reasons for rejecting his claim was incorrect.

Our investigator's view remain unchanged and, as the complaint couldn't be resolved, the complaint was passed to me to make a decision.

On 12 January 2026, I sent Mr R and NewDay my provisional decision setting out why I was minded to not upholding the complaint. I asked both parties to submit any further evidence or make any final comments before I completed my review of the complaint. NewDay didn't make any additional submissions. Mr R did reply and I will address his concerns below.

### **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.

In my provisional decision I explained the following:

*Firstly, I'd like to reassure Mr R, that I have considered all his concerns carefully, but I will only be dealing with the most salient parts of the complaint in this decision as I'm required to decide matters quickly and with minimum formality. So, while I may not comment on everything he's said and all the evidence submitted, I want to re-assure him that I have looked at everything he's said and provided. Our rules allow us to do this.*

### Chargeback

*Whenever a consumer makes a claim for money back from their bank, businesses like NewDay have two potential ways to retrieve money back for consumers. A claim under chargeback and a claim under section 75. Customers don't always have to explicitly mention which claim they are making as often consumers may not be aware of their rights or may not understand the extent of their options. I can see Mr R asked for a "charge back claim under section 75" to be considered, but they are two separate claims. NewDay is the expert, and we would expect it to consider all reasonable avenues to maximise a consumers chances of getting their money back. It's also good and common practice for businesses to consider both options.*

*So, while I understand Mr R says he made a section 75 claim, I don't think NewDay acted unreasonably for initially considering whether a refund can be obtained through the chargeback process in the first instance. Chargeback claims are time sensitive and sometimes amounts can be refunded without the need for a complex investigation. And while I understand that this means the section 75 claim is considered afterwards, I don't think this delay has affected the outcome. Once a chargeback claim fails, a section 75 claim can be considered which doesn't have the time sensitive constraints that applies to chargeback claims.*

*Under the chargeback process, NewDay is able to ask for a refund directly from C under specific circumstances through the scheme. There are various reason codes that can be used and based on Mr R's circumstances, an appropriate reason code might be that services provided by C were defective. NewDay's role is to ensure the facts and evidence submitted are enough for it to request a refund on Mr R's behalf, and then if a defence is submitted by the merchant, it has to check whether any defence is valid under the chargeback rules.*

*NewDay attempted a chargeback through the Mastercard chargeback process, but this was defended by C informing it of the offers made. Once C offered a partial refund, even though this was significantly less than what Mr R wanted, it would have been difficult for NewDay to pursue this any further. This is because under the chargeback scheme, NewDay would have to show that C hadn't adjusted the price or offered any kind of refund/credit to pursue the matter any further. So, I don't think it was unreasonable for NewDay to conclude that Mr R's claim didn't have any reasonable prospect of success.*

*I appreciate that Mr R is unhappy that the amount refunded was then re-debited from his account shortly after it notified Mr R that C had defended the claim. But this is usual practice for these types of claims. And I can see in its email of 25 October 2024, it did notify him that the chargeback could be defended by C and it would contact him if that happened. This is part of the chargeback process that mirrors the process of all financial businesses. And businesses don't have to wait until the complaints process is completed to make such debits.*

*I appreciate why Mr R was so disappointed with the outcome of his claim at this stage but based on what I've seen, I don't think NewDay has acted unreasonably or incorrectly. And I don't think Mr R has lost out because of anything NewDay did/did not do.*

### Section 75

*I understand how disappointed Mr R must feel given he's paid significant sums for a cruise and can appreciate how dissatisfied he feels that it didn't match his expectations. But it may be helpful to explain that I need to consider whether NewDay – as a provider of financial services – should offer a remedy in response to his claim under section 75. But it's important to note NewDay isn't the supplier. Section 75 is a statutory protection that enables Mr R to make a 'like claim' against NewDay for breach of contract or misrepresentation by a supplier when goods or services were bought using a credit card.*

*But it's important to note that NewDay isn't C and isn't responsible for everything that might've gone wrong with the cruise. NewDay is only liable to offer a remedy if Mr R can establish with evidence that there has been a breach of contract or misrepresentation – not for poor customer service or the holiday not meeting a customer's expectations.*

*There are certain conditions that need to be met for section 75 to apply. From what I've seen, I think those conditions have been met and NewDay doesn't appear to dispute this.*

*It may be helpful to explain that there are consumer rights laws and regulations that underpin contracts like this which I've taken into account such as the Package Travel and Linked Travel Arrangements Regulations 2018 (PTR) as well as The Consumer Rights Act 2015 (CRA).*

*To make a valid claim under section 75, Mr R would have to either show there has been a breach of an express term in the contract or an implied term. The Consumer Rights Act 2015 (CRA) for example, implies terms into the contract that services must be performed exercising reasonable care and skill. Alternatively, he'd have to show with evidence that there has been a misrepresentation for which NewDay is now liable to offer a remedy. But as set out above, NewDay is not responsible for answering claims about poor service or customer dissatisfaction or for the service not meeting any subjective expectations. NewDay would only be liable to offer a remedy under a fairly narrow set of circumstances which is namely when there is an established breach of contract that hasn't already been remedied or a misrepresentation that caused loss.*

*If Mr R is able to evidence that there has been a breach of contract, under the PTR, NewDay must offer Mr R an "appropriate price reduction" for being unable to carry out the services it had offered in the contract to a reasonable standard, or for failing to offer something Mr R was entitled to in the contract. The usual remedy for misrepresentation is for the cruise to be cancelled and for Mr R to obtain a full refund of what he has paid – which is difficult to achieve when he's already been on the cruise. So usually, a price reduction is an appropriate remedy. I think it's important to bear this in mind.*

*However, to begin with Mr R must evidence that there has been a breach of contract or a misrepresentation on the part of C, that NewDay is now obligated to remedy. And like our investigator mentioned, I have a number of concerns about Mr R's claims and the evidence he has submitted in support of his claims.*

*As explained above, I have focussed my assessment on Mr R's main areas of dissatisfaction rather than specifically addressing every comment he has made. Essentially, he has four main areas of complaint. Dining facilities, standard of food, voyage itinerary and on shore excursions and I'll address his concerns below.*

*Dining facilities: I can see Mr R did pay for dining experience at a particular restaurant which was shown on his booking form and emails from C show this was impacted by maintenance work. When making the booking, it seems that Mr R was supposed to be able to have his breakfast, lunch and dinner here at the same table which wasn't possible due to the ongoing*

*maintenance work at the restaurant which impacted the breakfast service. Where there is a failure to provide facilities in line with the booking terms, merchants are expected to provide facilities of equal or better quality (so to remedy the breach). It seems C provided an alternative restaurant for Mr R and his partner to dine at and alternatively they were able to order breakfast through room service. And I haven't seen any objective evidence that the alternative provided by C was of poorer quality. So, I can see why NewDay didn't think there was a breach of contract that required a remedy here.*

*However, I can still understand why Mr R would be so disappointed by this and, in any event, C doesn't appear to dispute this was overall disruptive and offered compensation for this. The dispute remains whether the amounts offered a fair given the circumstances. But, in my overall assessment of this claim point, I have to bear in mind that he wasn't left without recourse, he was given access to replacement options and did still use the food and drink available aboard the ship.*

*Standard of food: as explained by our investigator it is difficult to make a claim for breach of contract based on standard of food. The standard of food can be loved by some and hated by others based on their own subjective tastes and expectations. I understand Mr R feels in his view, the quality of food provided by other cruises was significantly better than that provided by C. But this isn't sufficient to uphold this aspect of his claim. Mr R would have to demonstrate that objectively the food provided by C fell below a reasonable standard and therefore C was in breach of contract rather than other cruises had better food. I don't think NewDay was incorrect to conclude there isn't sufficient evidence of a breach of contract for this issue.*

*Voyage itinerary – I understand when Mr R initially made the booking, he did so on the basis that the cruise would travel through three fjords. He was subsequently emailed to say there was an error on the itinerary, and it would only go to one fjord and would pass by the other fjords. He chose not to cancel the cruise at this time as he'd paid the deposit and there wasn't a comparable cruise available by anyone else that would be leaving in July 2024. The difficulty with this is, as Mr R decided to push ahead with the cruise despite the change, he's done so in the full knowledge of the change in itinerary. The remedy for misrepresentation is to cancel the cruise and receive a full refund. So, when Mr R chose not to cancel (whatever his reasons), he may have "affirmed" the contract based on the new itinerary and cannot then later claim a remedy for this. It seems the new itinerary was complied with even if the other fjords were in his view, some distance away.*

*On shore excursions – I understand Mr R's partner was unable to participate in two excursions due to serious ill health. I fully sympathise with his position on this matter and understand that he would have liked C to have treated them more compassionately than it appears to have done. But as I explained, NewDay is only expected to offer remedies for breach of contract or misrepresentation – not for everything that went wrong that Mr R might be unhappy with. It doesn't look like Mr R's partner being unable to take part in the excursions meant that there was a misrepresentation or breach of contract by C, that would mean NewDay was obligated to offer a refund.*

*Mr R has pointed out some service issues they were unhappy with on many of the on shore walks such as not being informed of the starting point of the walks, being disappointed that the walk involved mainly travelling through residential areas or limited time in the towns, not being informed of metal path with steps which they found stressful given their age and poor queue control when returning to the ship. I understand on the walk with the metal path, the "activity" was marked as "high level walking" on the booking form and many of the other issues don't amount to a breach of contract or misrepresentation – even if they do indicate some customer dissatisfaction points. As explained above, NewDay isn't obligated to offer*

*compensation for not meeting a consumers subjective expectations or being disappointed. I can only compel NewDay to offer a remedy for breach of contract or misrepresentation.*

*I appreciate on one of the walks Mr R was promised a walk through glaciers, but he says the walk was actually along roads that used to be glaciers. I fully appreciate the disappointment he must've felt when this happened. But C did offer compensation for disappointment which overall amounts to more than this excursion cost.*

*I understand Mr R also feels that C offered him a refund of the excursions his partner was unable to go on and 75% of the costs of the glacier walk and he feels NewDay should honour this offer as it was accepted by him. But I'm afraid I don't agree and I'll explain why.*

*The wording of C's offer could have been clearer, but it looks to me that it offered £650 for issues with the dining facilities and standard of food and £250 for his issues with the on shore activities, including the refunds of the activities mentioned above. And in any event Mr R did not accept this offer. He wanted the refunds C offered plus £1,200 compensation – which counts as a counteroffer. It is my understanding that one cannot simply accept parts of an offer they want and demand other amounts for the parts they are not happy with. His counteroffer effectively cancelled the original offer.*

*It is my understanding C made an offer of £900 for his entire claim. And NewDay credited him with an additional £300 in response to his complaint. The total amount offered by C and NewDay is now £1,200.*

*Under the PTR, where there has been a failing, Mr R is entitled to an appropriate price reduction. And given that Mr R stayed at the cruise and used all aspects of the holiday, I don't think the compensation here is unreasonable.*

*I want to make it clear that I'm not saying that things didn't go wrong and Mr R didn't experience the customer service issues he's mentioned. I appreciate when consumers pay such significant sums for a cruise, it can be extremely disheartening when the holidays don't meet their expectations. But while I do sympathise with Mr R, based on what I've seen, I don't think I could safely conclude that the amount offered by C and NewDay in response to his concerns over the service received was unreasonable or that he's entitled to the amounts he's requested. Overall, I think a compensation amount of £1,200 is a fair way to put matters right, and I don't order NewDay to do anymore. If Mr R wants to accept C's offer of £900 he can contact it to do so.*

### *Summary*

*Overall, I am sorry that Mr R remains so unhappy with his cruise. But based on what I've seen I don't think I could safely conclude he is entitled to more than what he's been offered so I don't find there are grounds for me to uphold this complaint. I also don't think NewDay did anything incorrectly in relation to his chargeback claim that warrants a compensatory payment. So, I don't intend to uphold this complaint.*

As mentioned above, NewDay didn't make any additional submissions. Mr R replied to my provisional findings broadly with the following:

- He doesn't believe the alternative dining options offered by C (which was room service and the alternative restaurant), adequately remedied the breach of not being able to dine at his preferred restaurant. The room service options were limited, and the alternative restaurant didn't provide the exceptional culinary standards he feels was offered at the preferred restaurant.

- C offered Mr R compensation in respect of the loss of enjoyment suffered due to the food and dining issues he raised – which is an admission that the service offered was in breach of the service standards promised.
- He still feels the voyage itinerary was misrepresented as the email did not say only one of the fjords would be sailed through but that only one particular one would not be sailed through. He therefore expected the other two fjords to be sailed through. Whereas in reality only one was sailed through and the other one was only passed by.
- He doesn't feel the price reduction offered by C was adequate for both the cruise itinerary and issues with the shore excursions. Going through the fjords was the main reason for booking this cruise. He feels a price reduction of £600 would be more appropriate for the disappointment he faced for this particular issue.
- The without prejudice offer of £1,200 made to C expired before he made his claim to NewDay. So, as his offer was not accepted by C, he feels the original offer of £900 remains. And as the offer of £1,200 was expired, it shouldn't be used as a way of determining an appropriate level of compensation.
- Mr R did not use all aspects of the holiday as there were numerous facilities such as the spa, bar facilities, gymnasium and musical and dance events that he did not participate in. The actual benefit he gained from the contract was limited to the shore excursions, walks around the decks and visits to the library. He said it wasn't appropriate for me to decide that £1,200 compensation was appropriate based on the perception that he used all aspects of the cruise when he in fact didn't.

I want to re-assure Mr R that I have considered and read through all his submissions, but I will only address the points that I find are key to helping me reach my conclusions.

Firstly, the email from C said one particular fjord wasn't included in the itinerary at all and the breakdown of the updated itinerary immediately below did show the other two fjords would only be cruised by. I had already pointed out that C hadn't disputed that the disruption caused by the dining facilities would have affected Mr R's enjoyment of the cruise and offered compensation for this. But I thought it was important to bear in mind that on top of the compensation offered, Mr R was also offered alternative options, and he wasn't for example left without food/drinks being available to him. I would add that I appreciate Mr R may not have used all the facilities on offer, but these services were on offer, available for him to use, and part of the package he paid for. The fact that he didn't utilise them, doesn't mean he is entitled to more compensation. While Mr R feels more compensation is warranted for certain aspects, he hasn't explained how he calculated those amounts other than this is what he wants and believes is fair.

I appreciate Mr R's comments over the offer of £1,200 being offered without prejudice and having expired before he raised his claim with NewDay. But ultimately, I have to decide what I think is fair and reasonable in the circumstances of this complaint. NewDay has explained how it calculated its compensation amount, which was based on Mr R saying he'd be willing to settle the dispute based on an offer of £1,200. So, it offered him £300 and with C's offer of £900, this took his total amount to £1,200 which is an amount Mr R had selected as an amount he'd have been willing to settle for. While this offer may have expired, I don't think NewDay's method of calculating the amount of compensation was unreasonable. Mr R feels more is warranted but can't explain how he has calculated the additional amount other than this is what he wants to settle the claim.

Overall, nothing Mr R has said has made me change my view of his complaint. While I can see things didn't go completely as Mr R expected, I think the total amount offered to him by NewDay and C combined – amounts to a fair price reduction under the PTR so I don't think NewDay's response to his complaint is unreasonable and I don't find there are grounds for me to direct NewDay to offer any more. However, I should point out that Mr R doesn't have to accept this decision. He is free to pursue the matter by more formal means such as through the courts.

### **My final decision**

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 9 April 2026.

Asma Begum

**Ombudsman**