

The complaint

Mrs S is unhappy with her credit card provider, NewDay Ltd trading as John Lewis Partnership Credit Card, after it rejected her claim for a refund for a hotel stay.

Mrs S has been represented at times, but to keep things simple, I've only referred to Mrs S.

What happened

Mrs S booked a stay at a hotel in 2023, using her NewDay credit card. She booked a standard double room for four nights in October 2023, at a total cost of around £800.

When Mrs S arrived at the hotel, she found the bathroom didn't satisfy her accessibility needs as it had a bath without grabrails. She asked the hotel to show her other rooms, which it did. An accessible room wasn't suitable as she thought it was too much like a hospital room. Instead she accepted a room with a walk-in shower and anti-slip bathroom mats. However, Mrs S noted the following problems with the new room and service from the hotel:

- a strong smell of damp or mold
- dirt under the desk and in the bathroom
- exposed carpet grippers
- sealed windows without working air conditioning
- the rooms didn't have landline phones to contact staff
- staff were rude to her when she brought problems to their attention
- Mrs S and her husband didn't sleep well, had to go outside for air in the night, and woke with headaches. This ruined their enjoyment of the trip.

At the end of October, Mrs S asked for a refund under the hotel's "good night guarantee" scheme ("the guarantee"). The hotel rejected the claim, telling Mrs S she couldn't claim for a problem with air conditioning as the standard room she booked wasn't advertised as having it. It also didn't accept there was evidence of faults with the room Mrs S was moved to. Mrs S continued to correspond with the hotel for several months until she exhausted the complaint process.

Mrs S then made a claim with NewDay, asking it to refund her under Section 75 of the Consumer Credit Act 1974 (S75 CCA). NewDay considered the claim and initially rejected it, as Mrs S had stayed at the hotel for all four nights despite the problems with the rooms. It also found the hotel had offered alternatives which Mrs S had declined.

NewDay later reviewed the claim and agreed with the hotel that the room Mrs S booked didn't list air conditioning as a facility, so there hadn't been a breach of contract. But it acknowledged Mrs S didn't enjoy a comfortable stay and so offered to refund £400 towards the booking to recognise her poor experience.

Mrs S didn't accept this offer, bringing the complaint to the Financial Ombudsman and asking for a full refund. Mrs S has provided evidence that other customers received a full refund from the hotel's guarantee for issues with traffic noise and air conditioning. She says this proves the hotel ought to have refunded her stay.

Our Investigator said the offer NewDay had made was a fair way to resolve the complaint. He found Mrs S had received the full four-night stay she booked, and the guarantee provided by the hotel doesn't provide a refund for things that weren't included in the booking. Mrs S disagreed with the outcome, saying the quality of the room she received was unsatisfactory, so NewDay should refund the full cost of what she paid for the booking.

As Mrs S doesn't agree with our Investigator's findings, the complaint has come to me for a 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.

Having done so, I agree with the outcome reached by the Investigator – and I'll explain why.

Mrs S has made several detailed points in her complaint. I've considered everything she's said and all the information on the file. But in my decision, I don't intend to refer to everything or address every point made. I mean no discourtesy by this, instead I will focus on what I see as being the key outstanding points following the Investigator's outcome, and the reasons for making my decision.

Potential chargeback claim

Our Investigator explained Mrs S raised the issues with NewDay around a year after she stayed at the hotel, so she was too late to ask the bank to raise a chargeback. I agree with this and have found it was fair for NewDay to not consider a chargeback for this reason.

Claim under S75 CCA

Mrs S paid for the hotel using her credit card. NewDay is a different business to the hotel so I can't hold it responsible for everything that may have gone wrong. Instead, S75 CCA allows a borrower under a credit agreement to make a like claim against the credit provider if there is either a breach of contract or misrepresentation by the supplier of the services. There are certain conditions to be met for a valid claim to be considered, and I think they've been met here.

The Consumer Rights Act 2015 (CRA) implies terms into the contract to supply services that "the trader must perform the service with reasonable care and skill" (Section 49). There are also terms expressed in the contract between Mrs S and the hotel. I need to decide how NewDay answered the claim for breach of contract or misrepresentation.

It isn't disputed that Mrs S received a standard double room for all four nights – so the hotel provided the services contracted on the booking. Instead what is still for me to decide is whether the hotel provided the services with reasonable care, or whether it broke any written terms in the contract.

I'm sorry to hear Mrs S was so upset by the standard of the rooms she stayed in and says this in turn affected her enjoyment of her trip. I've reviewed the evidence she's provided, and I've found:

- The initial room was changed because Mrs S struggled to use the bathroom, rather than there being any fault. Mrs S accepts she didn't require a fully accessible room but says other hotel brands have grab rails. However, I've not seen anything to suggest the room Mrs S booked was advertised as having these. Despite the hotel providing the room Mrs S booked, it agreed to show her other rooms to find one suitable for her needs. NewDay says the hotel did enough to try and put right any problems with the first room, and I think this response is reasonable.
- Mrs S says there was a smell of mold or damp in the replacement room - which the air conditioning didn't remove. She also said the air conditioning was noisy. These may not be indicative of the services being provided without reasonable care and skill – smells and levels of noise are also subjective to each person. I think it's understandable why Mrs S would be upset about the conditions of the second room, but I don't think it's unreasonable for NewDay to have asked to see supporting evidence of a problem or fault causing this. I say this because NewDay would have needed such evidence to be able to reach a firm conclusion that there had been a breach of contract by the hotel.
- NewDay has explained the hotel's website confirms landlines aren't provided in rooms, so again there hasn't been a breach of contract here. I think NewDay has fairly considered this point, but I can understand why Mrs S might have been disappointed.
- Mrs S provided NewDay with photos of exposed carpet grippers in the second room, saying they were dirty and potentially dangerous. I agree this evidence could show the hotel didn't fully act with reasonable care and skill when providing the room with the grippers exposed.
- It's also clear Mrs S strongly feels she was treated rudely by the staff during her stay. I understand it's hard to provide evidence for issues like this – so NewDay didn't have much to support Mrs S' claim that the hotel staff failed to treat her with reasonable care during the stay. It accepted Mrs S had a poor experience overall, based on her testimony and interaction with the hotel after the stay.
- NewDay has considered the photo evidence and Mrs S' testimony about her treatment and made an offer of £400 to compensate her for these problems during the stay. It's not clear if NewDay thinks this means there was a breach of contract – but even if it did, I'd need to consider what a fair remedy would be for Mrs S. NewDay has already offered a refund of over 50% the cost of the stay, and as I'll come on to, I think this more than fairly covers a breach of contract here.

Overall, I'm persuaded the answer NewDay ultimately gave Mrs S for her S75 CCA claim was fair and reasonable. I say this because there isn't strong supporting evidence the hotel failed to provide the services in line with its obligations under the CRA for everything Mrs S said went wrong. I'm also not persuaded the hotel misrepresented the rooms to Mrs S. I understand how much the hotel stay upset Mrs S, and how strongly she feels NewDay are acting unfairly, but I don't find I have the grounds to direct NewDay to offer her a full refund.

The hotel's guarantee and NewDay's offer

The guarantee the hotel provides forms part of the terms and conditions for bookings. These are express terms in the contract between Mrs S and the hotel – so I'd expect NewDay to consider if they have been breached as part of its review of the S75 CCA claim.

Briefly, the guarantee allows customers to claim a refund for nights where they don't get a "good night's sleep" – subject to exclusions and time limits. NewDay reviewed the terms of the guarantee and found that as the room Mrs S booked didn't list air conditioning as a feature, it wouldn't qualify for a refund if it was faulty.

I think it's reasonable for NewDay to be concerned about the claim not meeting the terms and conditions of the guarantee for several reasons. For example, customers must claim within seven days of checkout, certain problems are excluded and there are limits to the value and number of claims per customer. The guarantee doesn't change Mrs S' statutory rights under the CRA, instead it's a set of additional promises from the hotel.

NewDay considered the guarantee alongside Mrs S' statutory rights, and the evidence I've referred to for the S75 CCA claim. It accepted Mrs S didn't have a good experience at the hotel. As a result, it offered to refund £400, representing more than 50% of the cost of the stay.

I think NewDay's response here is generous. I say this as while there's some evidence to support the hotel didn't provide parts of the contract with reasonable care and skill – such as the exposed carpet grippers – Mrs S did receive the benefit of using the hotel for all four nights of the stay. It's also clear Mrs S was very upset about the service she received from staff, the conditions of the room itself, and the responses from the hotel – but these issues are excluded in the terms of the guarantee.

For the reasons set out above, I don't think Mrs S is entitled to a full refund of the cost of the stay. However, I think the offer NewDay has already made more than covers the breaches of contract I've seen.

I'm sorry to hear how the stay has affected Mrs S – but I see no reason to direct NewDay to refund more than the £400 it's already offered.

My final decision

NewDay Ltd trading as John Lewis Partnership Credit Card has offered £400. For the reasons set out above I think this is fair.

My final decision is that NewDay Ltd trading as John Lewis Partnership Credit Card should pay Mrs S £400.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 31 December 2025.

Hannah Dunkley
Ombudsman