

The complaint

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

What happened

In June 2024, Mr G used his NewDay credit card to pay £4,000 towards a package holiday he’d booked through a booking agent I’ll refer to as V. My understanding is that the package included flights and hotel and the total cost was just under £22,000.

Mr G was not happy with the holiday and raised numerous complaints whilst at the resort as well as contacting NewDay directly on his return. Mr G was unhappy with many things including, the dining options, food quality, waiting times, the cleanliness of the resort as well as the cleanliness on the plane. He noted a number of service concerns such as the toilet on the plane not working which required him to use the toilet on the premium economy section of the plane, the low battery sign showing on the safe in his room, and a broken mirror. He also felt the resort should have been better prepared for a hurricane that caused supply issues during his stay at the resort.

NewDay raised a chargeback on behalf of Mr G and V offered a refund of £1,177.85 to address the service failings. Mr G wanted his claim to be reviewed under section 75 of the Consumer Credit Act 1974 (section 75). Mr G wanted to make a claim because he noted that the hotel hadn’t been advertised correctly as the restaurants were not, in his view world class, were only open at specific times of the day which he wasn’t informed about (so wasn’t unlimited), and he also noted that the pool was closed on two occasions because of a photo shoot – again which he wasn’t informed about.

NewDay subsequently declined Mr G’s section 75 claim explaining that it didn’t feel there had been a breach of contract and the offer made by V to address the service concerns was fair. It added that the hurricane was an act of God so any failings related to that wouldn’t amount to a breach of contract.

Mr G decided to refer his complaint to the Financial Ombudsman. He re-iterated his earlier points and felt that the holiday hadn’t been represented accurately, and the services hadn’t been delivered to an appropriate standard. Mr G also submitted evidence in the form of pictures and video’s including a photo showing a stained carpet, a loose floorboard on the outside deck and sunbeds looking worn compared to the newer ones.

Our investigator looked into things and felt that much of Mr G’s complaints regarding the quality of service were subjective and, in any event, V had offered a refund of £1,177.85 and he hadn’t seen anything to suggest more was warranted in this case. Mr G didn’t agree. He reiterated that the hotel was mis-advertised, and he wanted to know if the payment placed into his account as offered by V would affect his legal rights.

It's not clear whether the evidence submitted by Mr G in the form of pictures and videos of the issues Mr G was unhappy with was sent to NewDay during its investigation, but it has since been sent to NewDay, and it hasn't made any further comments.

Our investigator's view remains unchanged and, as the complaint couldn't be resolved, the complaint has been passed to me to make 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.

Firstly, I'd like to reassure Mr G, 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.

I would add that I understand how disappointed Mr G must feel given he's paid significant sums for a holiday 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 G 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 V and isn't responsible for everything that might've gone wrong with the holiday. NewDay is only liable to offer a remedy if Mr G 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).

In order to uphold Mr G's section 75 claim on the basis that there has been a breach of contract, Mr G would need to evidence that V breached a term of the contract – and that caused him to suffer loss. He would have to show that either, there was a breach of an express term of the contract such as a specific written term that had been breached (for example specific facilities included and paid for in the contract didn't exist or weren't available like a beach or a sports bar) or whether there has been a breach of 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.

If he is able to evidence that there has been a breach of contract, under the PTR, NewDay must offer Mr G 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 G was entitled to in the contract.

However, to begin with Mr G must evidence that there has been a breach of contract or a misrepresentation on the part of V, that NewDay is now obligated to remedy. And like our

investigator mentioned, much of the concerns Mr G has raised is subjective. For example, Mr G's view that the food not being world class is subjective. I appreciate he likes his food a certain way and fully accept that the food provided didn't meet his preference. But something not being in line with a consumers taste is not the same thing as not being of a reasonable standard. As explained above, not being in line with a consumers preference, does not give rise to a successful section 75 claim. I appreciate it was possible for the hotel to meet Mr G's specific dietary request as was done on one occasion, but I don't think its contractually obligated to do so for every meal. And its only contractual failings that would give rise to a successful claim.

Additionally, concerns such as cleanliness is also subjective. Cleanliness must be to a reasonable standard rather than requiring perfection. And its difficult to evidence that the cleanliness levels fell below a reasonable standard rather than not meeting Mr G's specific subjective standards.

I would add that restaurants only being open at specific times is common at resorts of this nature and Mr G not being specifically advised of the opening times prior to booking the holiday is unlikely to amount to a breach of contract or misrepresentation. I appreciate he was told that he'd be entitled to unlimited food and drink but that doesn't mean the restaurant will be open for 24 hours – but that whilst in the food establishments, consumers can order an unlimited amount of food and drink. So, I don't think I could safely conclude that the holiday was mis-advertised.

I understand a hurricane caused some disruption and damage to the resort and Mr G has said whilst this is to be expected, he felt the hotel should have been better prepared and rectified the issues more swiftly without the need for him to point the issues out. I do sympathise with his position, but V's terms do specify that compensation is not payable for any failings caused by unavoidable or extraordinary conditions (which includes natural disasters like hurricanes). So, while I do understand why Mr G is unhappy with the service received, this doesn't amount to a breach of contract for which NewDay would be obligated to offer a remedy.

Having said that, I do not doubt that there has been some service concerns in this case – from the toilet being unavailable on the plane to the long waiting queue and the pool being closed for a photo shoot without prior notification. I fully accept that this would've caused Mr G significant unhappiness given the amounts he'd paid for this holiday. But I'm not satisfied that these failings entitle him to a refund of £8,000 of the costs of the holiday, bearing in mind he utilised all aspects of the package.

Under the PTR, even where there has been a failing, Mr G is entitled to an appropriate price reduction. And given that Mr G stayed at the resort and used all aspects of the holiday, I don't think the refund given by V is unreasonable.

My concern with Mr G's submissions is that while I fully appreciate that he is unhappy as the holiday didn't meet his expectations, as he is making a claim, the onus is on him to evidence that claim with objective evidence which is difficult to do when much of his claims relate to quality concerns. Section 75 is a legal claim, and it would be difficult to uphold mainly on consumers belief that the holiday was sub-par without independent evidence to support that claim. Quality is subjective, so it's not unreasonable for NewDay to require sufficient evidence that the service fell below a reasonable standard expected. And any of the service failings caused by the hurricane, in my view, wouldn't lead to a successful claim.

I want to make it clear that I'm not saying that things didn't go wrong and Mr G didn't experience the customer service issues he's mentioned. I appreciate when consumers pay such significant sums for a holiday, it can be extremely disheartening when the holidays

don't meet their expectations. But while I do sympathise with Mr G, based on what I've seen, I don't think I could safely conclude that the amount offered by V in response to his concerns over the service received was unreasonable or that he's entitled to the amounts he's requested. Based on this, V's payment for the impact that these issues have had on Mr G, I think is a fair way to put matters right, and I don't order NewDay to do anymore.

Chargeback

I understand Mr G made a section 75 claim, but it is common for businesses such as NewDay to initially consider whether a refund can be obtained through the chargeback process in the first instance. This is because chargeback claims are time sensitive and sometimes amounts can be refunded without the need for a complex investigation. So, I don't think it was unreasonable for NewDay to attempt the chargeback in the first instance.

I would add that once V offered a partial refund, even though this was significantly less than what Mr G wanted, it would have been difficult for NewDay to pursue this any further – as it would have to show that V hadn't adjusted the price or offered any kind of refund/credit to pursue the matter any further. Additionally, the chargeback process generally enables NewDay to request the amounts charged on the specific card used not for other losses consumers are claiming for due to a breach of contract or misrepresentation. So, I think NewDay subsequently looking into Mr G's section 75 claim was appropriate.

Mr G has also repeatedly questioned whether the payment made into his account via the chargeback process affects his legal rights to pursue the matter any further. This service is unable to provide legal advice so Mr G will need to obtain independent legal advice if he wishes to pursue the matter. I appreciate Mr G didn't agree to the refund and hasn't accepted any offers made by V. The refund was done automatically, which is common in chargeback claims and it may be helpful for Mr G to point that out should he seek advice.

I understand that NewDay didn't keep Mr G updated throughout its investigations of his claim so offered £50 compensation for this. Based on what I've seen, I don't think any more is warranted in this case.

Summary

Overall, I am sorry that Mr G remains so unhappy with his holiday. But based on what I've seen I don't think I could safely conclude he is entitled to more than what V had already offered so I don't find there are grounds for me to uphold this complaint. I should point out that Mr G doesn't have to accept this decision and if he rejects it, it will not be binding on him or NewDay. He can then pursue the matter by more formal means such as through the courts. But as explained above, he would need to seek independent legal advice for that.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 8 January 2026.

Asma Begum
Ombudsman