

The complaint

Mr R complains NewDay Ltd didn't do enough to help get a refund for a transaction made on his credit card.

What happened

In April 2024, Mr R booked and paid for a hotel stay through a comparison site I'll call "B". Mr R paid for this with his NewDay credit card.

While staying at the hotel later that month, Mr R says the hotel accommodation was significantly below the standard he'd expected. Unhappy with the service he received from the hotel, Mr R says he checked out after one night into his week-long stay.

Mr R raised his concerns with B, who enquired with the hotel, which said the booking was non-refundable. So, B didn't agree to provide a full refund but offered credit of approximately £20 off the cost of a future booking.

Unhappy with B's response, Mr R contacted NewDay for help. NewDay raised a chargeback, which is a process of asking B for a refund under rules set by the card scheme provider, which in this case is Mastercard.

B defended the chargeback, which is to say it didn't agree a refund was due. Considering everything it had been provided, against the scheme rules NewDay didn't think it could challenge the chargeback further, so it closed it in B's favour.

NewDay also considered whether it was liable to provide a refund under Section 75 of The Consumer Credit Act 1974 ("Section 75"), but as the payment was made to B rather than the hotel, it didn't think Section 75 applied to this transaction.

NewDay didn't change its answer when Mr R complained, so he referred his concerns to the Financial Ombudsman. I previously set out my provisional findings on Mr R's complaint, which I've included here:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've given consideration to the relevant rules and regulations applicable to this complaint, and while I may not comment on everything (only what I consider is key) this is not meant as a discourtesy to either party, rather reflects the informal nature of our service.

As Mr R paid on his credit card, there are two options through which NewDay may have been able to provide a refund, be that through a chargeback or a claim under Section 75. I've therefore considered whether I think NewDay acted fairly in relation to both processes.

Chargeback

The chargeback process provides a way for a card issuer (NewDay) to ask for a payment its customer made to be refunded by the merchant (B) in certain circumstances. Some common examples where a chargeback can be raised is where goods or services aren't provided, where goods or services are defective, or where a credit isn't processed in line with a merchant's refund policy. The process is subject to rules made by the relevant card scheme. It's not a guaranteed way of getting money back.

NewDay raised a chargeback on behalf of Mr R. B defended the transaction, so didn't agree a refund was due, saying the dispute wasn't valid. So, my decision focuses on whether NewDay acted reasonably in the steps it took after receiving B's defence.

B's defence was that the accommodation was made available, the hotel said it didn't have a record of concerns being raised at the time and that concerns about cleanliness are subject to opinion, added to this it said the booking was non-refundable.

I understand Mr R was unhappy with the hotel and says he raised this while staying there, but I think NewDay was reasonable in its decision not to pursue the chargeback further. Under the card scheme rules for NewDay to pursue the matter any further, it would have to show that Mr R contacted B to try to resolve the dispute first and that B refused to remedy the issue.

While I appreciate Mr R says he raised his concerns with the hotel directly, I can't see NewDay has been provided any evidence of this, or that the hotel failed to try and resolve the issues, such as offering an alternative room, refusing to clean the ants or its comments as to the state of the mirror. Added to this, while I appreciate is unhappy with the offer from B, it did offer a discount off a future booking, in response to the concerns he'd raised.

So, while I'm sorry to hear of the experience Mr R had at the hotel, I think NewDay was reasonable in concluding the chargeback didn't have a reasonable prospect of success if pursued further, against the card scheme rules.

Section 75

Section 75, says that, in certain circumstances, if Mr R paid for goods or services, in part or wholly on his NewDay credit card, and there was a breach of contract or misrepresentation by the merchant, NewDay can be held jointly responsible.

There are conditions that need to be met for Section 75 to apply. One of these is that there needs to be a 'debtor-creditor-supplier' (DCS) agreement in place between the parties to the transaction. Another is that the item purchased must fall within set financial limits.

While the cost of the transaction falls within the financial limits, NewDay doesn't agree there's a DCS agreement in place to mean it's liable.

From the evidence available, I agree with our Investigator and think it's likely there is the necessary DCS agreement in place for this transaction. However, for reasons I'll go on to explain, I don't need to go into further detail about this. This is because although I think NewDay should have considered the claim further, had it done so, I don't think there's sufficient evidence to demonstrate there was a misrepresentation or breach of contract to make NewDay liable to provide a refund.

I appreciate this answer will come as a disappointment to Mr R and I've explained below why I think this.

Was there a misrepresentation or breach of contract?

To say there had been a misrepresentation, I'd need to be satisfied that a false statement of fact induced Mr R to enter the contract.

Taking on board Mr R's concerns, I haven't been made aware of any false statement that he says induced him to enter the contract. Rather his concerns about the quality and cleanliness of the hotel could be considered an alleged breach of contract.

In considering whether there's evidence of a breach of contract, I need to think about what the courts may say, were Mr R to make a 'like claim' against NewDay.

My understanding is when Mr R checked in, he says the bathroom mirror had blood splatters on it (although from the photos it's possible this was rusting), there were ants next to his bed and a lizard in the room, the latter he provided a photo of.

While I'm sorry to hear of Mr R's disappointment with his hotel room, had NewDay considered his claim further, I think it's likely to have concluded there wasn't sufficient evidence to demonstrate a breach of contract occurred or that the hotel failed to offer a suitable remedy to this breach.

The evidence we have is Mr R's testimony that the room wasn't up to standard (and two issues he wasn't happy with, the mirror and the presence of a lizard) but his evidence is subjective. Mr R hasn't for example provided evidence showing the room was otherwise unclean or provided evidence that the room facilities were not working or not available. So, it's not clear whether this would be sufficient to claim that the room overall fell below a reasonable standard.

Even if it were accepted the room fell below a reasonable standard, the Consumer Rights Act 2015, which is relevant legislation to this complaint, implies terms into agreements such as Mr R's, that the service be provided with reasonable care and skill. If this doesn't happen, the initial remedy is that the supplier – the hotel – must attempt repeat performance, which in the circumstances of Mr R's concerns could be offering a replacement room or for further cleaning to be carried out.

However, as explained above, although I understand Mr R says he raised his concerns while at the hotel, NewDay hasn't been provided any evidence that the hotel accepted there were issues or that it declined to try and remedy these. Rather in B's defence to the chargeback, it had said the hotel wasn't aware of any issues and had it been aware it would have taken steps to try and resolve these.

So, while I have no reason to doubt what Mr R has told us, I don't think there's sufficient evidence to demonstrate that there has been a breach of contract, that B or the hotel was given an opportunity to remedy the issues and then failed to do so, which would make NewDay liable under Section 75.

As a result, even though I think it's likely there's a DCS agreement in place for this transaction, had NewDay considered Mr R's claim further, I don't think it would have concluded it was liable to provide a refund as there wasn't sufficient evidence of misrepresentation or breach of contract.

So, while I don't agree with NewDay's reason not to consider the claim further, I don't think this caused Mr R a loss. I say this as I think it would have reached the same conclusion, that it wasn't required to provide a refund had it further considered Mr R's claim.

As I don't think NewDay is liable under Section 75, I think it's reasonable to have applied charges and interest to the transaction in line with the terms and conditions of Mr R's agreement. Similarly, as it's reasonable NewDay asks that the transaction be repaid, and my understanding is the information NewDay has reported to the Credit Reference Agencies is a fair reflection of Mr R's payment history, it wouldn't then be fair to say NewDay must amend this.

I appreciate Mr R has also set out the impact this has had on him, which I'm sorry to hear of. However, as I'm satisfied NewDay reached a reasonable conclusion – that it wasn't liable to provide a refund for this transaction, albeit for different reasons – I don't then find that NewDay must pay compensation in relation to this complaint.

Responses to my provisional findings

NewDay confirmed it accepted my provisional findings and had no further comments.

Mr R disagreed with my findings, and provided further comments which I've summarised below:

- NewDay systems prevented him from submitting all his evidence;
- NewDay didn't try to re-present his chargeback;
- He had complained to the hotel about the condition of the room, and it had failed to remedy this, which was a breach of contract; and
- NewDay failed to comply with deadlines, including those previously set by the Financial Ombudsman.

Therefore, the complaint has been passed back to me, so that I can 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.

Having done so, I've reached the same conclusions as those set out in my provisional findings. While I appreciate this won't be the answer Mr R is hoping for, I won't be directing NewDay to do anything further in relation to this complaint.

I've considered Mr R's further comments. In relation to his chargeback dispute, it's true that NewDay, like all card providers, can only raise a chargeback once against any transaction. However, there are multiple steps within a chargeback, meaning it can pursue a chargeback further, for example if it disagrees with a merchant's defence as to why it should be able to keep the money.

For the reasons I've explained in my provisional findings, I think NewDay was reasonable not to pursue the chargeback further having received the merchant's defence. I've also considered Ms R's concerns about having a fair opportunity to submit information about his dispute; in doing so I'm satisfied Mr R was able to clearly set out the basis of his dispute, which then meant NewDay was able to raise a chargeback. So, I haven't found NewDay treated Mr R unfairly in its consideration of his chargeback.

In relation to Mr R's Section 75 claim, as set out in my provisional findings, I think it's likely the relationships existed to mean there was a DCS agreement for this transaction. I'm not however persuaded there's sufficient evidence to demonstrate a breach of contract occurred, which NewDay was therefore liable to remedy.

While Mr R has provided evidence that he did try to resolve his concerns with B, it didn't accept there had been a problem or that a refund was due. Similarly, I'm not aware of any correspondence with the hotel directly, which was provided to NewDay which demonstrates there was a breach of contract.

So, this is to say, NewDay had been presented with two versions of events, Mr R's that the room was below the standards expected and that he'd been unsuccessful in trying to resolve the problems with the hotel and B. Conversely, B and in conjunction the hotel hadn't accepted there were problems with the room or that it had been given an opportunity while Mr R was at the hotel to try and resolve any concerns.

While I have no reason to doubt what Mr R said, I must consider what the courts may say, were he to make a like claim against NewDay. In doing so, I don't think there's sufficient evidence to show that there's been a breach of contract for the reasons I've set out.

As a result, I remain of the opinion that while NewDay should have considered Mr R's Section 75 claim further, I don't find its failure to do so caused him a loss. This is because for the reasons explained, I don't think it would have concluded there was sufficient evidence to mean it was liable under Section 75.

I appreciate Mr R has also raised concerns about the service he's received from NewDay since raising his complaint and the amount of time it took to respond to our Investigator's view. Complaints handling, isn't itself a regulated activity, meaning it isn't something I can make a finding on. So, I won't make any further comment on this point.

In conclusion, while I know this answer will come as a disappointment to Mr R, I won't be directing NewDay to do anything further in relation to this complaint as I think it was fair in not pursuing the chargeback further. While NewDay should have considered its obligations under Section 75 further, I think it would have concluded it wasn't liable to provide Mr R a refund and therefore don't find Mr R suffered a loss as a result of NewDay's actions.

My final decision

For the reasons I've explained above, I don't 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 18 December 2025.

Christopher Convery
Ombudsman