

## **complaint**

Miss R complains that NewDay Limited won't refund to her the money that she paid for an overseas package holiday. Her complaint is made against NewDay under section 75 of the Consumer Credit Act 1974.

## **background**

Miss R used her NewDay credit card in August 2016 to pay £1,398.81 towards the cost of an overseas package holiday for her and her family. The cost of the holiday was £1,524.97 (and Miss R paid a total of £1,595.85 to the holiday company including insurance and other costs). The holiday was booked for October 2016. Miss R said that there were many issues with the holiday – including no transfers being included, much of the hotel and its facilities being closed, the quality of the accommodation, meals and service that they received and food poisoning from raw chicken. The issues were described in detail in a letter that Miss R wrote to the holiday company in October 2016. The holiday company refunded to Miss R the 30 Euros that she spent on a taxi for her journey to the airport at the end of the holiday.

There was then a delay before Miss R claimed a refund of the money that she'd paid for the holiday from NewDay under section 75. It sent her its final response letter in May 2018 which said that Miss R wasn't covered under section 75 for this type of claim – and in June 2018 it said that Miss R's complaint related to the standard of service provided by the travel agent which isn't covered under section 75 – so it referred her to ABTA. Miss R wasn't satisfied with its response so complained to this service.

The investigator recommended that this complaint should be upheld. She said that there were issues with the condition of the rooms, the transfers, the limited availability of some of the resources that Miss R was meant to receive and the poor quality of the food she was served – which NewDay as the finance provider needed to put right. But she said that the flights were fine and Miss R received accommodation for seven days which included access to a park (although she accepted that some amenities weren't available and parts of the park were closed). So she didn't think that it would be fair for Miss R to receive a full refund of the money that she'd paid for the holiday. And she recommended that a 50% refund (£762.50) from NewDay was reasonable in the circumstances. She also thought that Miss R should be compensated for the distress and inconvenience that she'd been caused – and she thought that £200 would be fair and reasonable in the circumstances.

Miss R has accepted the investigator's recommendation. But NewDay said that its section 75 team was reviewing those recommendations - and then, in December 2018, that it was being reviewed by its legal team. And it said that it would let the investigator know when there was an update – but no further response to the investigator's recommendation has been received from NewDay.

## **my findings**

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

In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier. To be able to uphold Miss R's complaint about NewDay, I must be satisfied that there's been a breach of contract or misrepresentation by the holiday

company and that NewDay's response to her claim under section 75 wasn't fair or reasonable. I'm not determining the outcome of Miss R's claim under section 75 as only a court would be able to do that.

Miss R has described in detail her issues with the holiday and she's provided photos to support what she says about some of those issues. The hotel was a 4 star hotel and I'm persuaded that it's more likely than not that some of the amenities and services that she received fell significantly below the standard that would be expected from a 4 star hotel. In particular there were issues with the condition of the rooms, the transfers, the limited availability of some of the facilities and the poor quality of the food.

But the flights and accommodation (including some of the facilities in the park) were provided to Miss R and her family and they will have benefitted from them – even if they didn't enjoy them as much as they expected to.

Miss R has accepted the investigator's recommendation that she should receive a refund of 50% of the money that she paid for the holiday. Miss R paid £1,524.97 for the holiday and 50% of that is £762.50. I consider that the issues with the holiday are breaches by the holiday company of its contract with Miss R – and NewDay is jointly liable for those breaches under section 75. So I find that it would be fair and reasonable in these circumstances for NewDay to refund £762.50 to Miss R.

Miss R has been caused distress and inconvenience by these events – including NewDay's failure to properly deal with her complaint. It said that her complaint wasn't covered by section 75 which will have caused her further distress and inconvenience. And I find that it would also be fair and reasonable for NewDay to pay £200 to Miss R to compensate her for the distress and inconvenience that she's been caused.

### **my final decision**

For these reasons, my decision is that I uphold Miss R's complaint. And I order NewDay Limited to:

1. Pay £762.50 to Miss R to refund her for 50% of the amount that she paid for the holiday.
2. Pay £200 to Miss R to compensate her for the distress and inconvenience that she's been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 28 June 2019.

Jarrold Hastings  
**ombudsman**