

complaint

Ms M complains that NewDay Ltd refused her claim brought under Section 75 of the Consumer Credit Act 1974. She says the package holiday she partly paid for using her credit card was not as advertised. She wants compensation.

background

Ms M tells us she arranged a package holiday for her family through a company I'll call "B". And this was partly paid for using her credit card which was supplied by NewDay. She says the holiday didn't meet her expectations in several ways and that not all the services which had been offered were provided. In particular she refers to problems with flights and transfers; noise and building work at two of the hotels were disruptive and not all the advertised facilities were available. And she says extra car parking fees were charged when these had been included in the overall cost of the holiday.

NewDay told us the only breaches of contract it thought had occurred were in relation to building work being carried out at one hotel and car park charges being added incorrectly. It accepted that some of the advertised facilities had not been available. NewDay said that Ms M's partner had made a separate claim against B and had been refunded £400. It thought this level of compensation was fair. It said it wouldn't be upholding Ms M's complaint.

Our investigator did not recommend the complaint should be upheld. He said he accepted that Ms M and her family had suffered some inconvenience. But he thought the refund of £400 made by B was fair and reasonable. So he wouldn't be asking NewDay to do anything different.

Ms M didn't agree that the level of compensation offered was sufficient. As it's not been possible to resolve the complaint an ombudsman has been asked to make a final decision.

.my findings

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

I need to explain that I'm considering Ms M's complaint in the light of the fact that her partner has already been refunded a proportion of the cost of what was a family holiday, by a different business, B. As Ms M's complaint is based on essentially the same facts, I think it's fair and reasonable to take this earlier payment into account in deciding if NewDay has dealt with her claim fairly.

I'm sorry that the holiday didn't prove to be as enjoyable as she and her family had hoped. And I can understand her sense of disappointment.

This claim has been brought under section 75 and whilst I don't apply the law - directly - I do take it into account. But it's important to note that - as this complaint is brought against NewDay - I'm looking at whether it handled Ms M's claim fairly rather than deciding the merits of any underlying claim she may have against B, the package holiday supplier. But I do take this into consideration in deciding if NewDay has dealt with her claim properly.

Section 75 potentially provides a customer - who has used certain types of credit to pay for goods and/or services - with a "like" claim against the supplier of that credit as they would have against the supplier of the goods or services. It requires various pre-conditions to be met before a claim can be validated. This includes the requirement for there to have been a breach of contract and/or misrepresentation by the supplier. It's also relevant to note that the consumer only has to pay for part of the relevant goods or services by credit card in order to obtain the protection offered by section 75. But as NewDay is not disputing that the required pre-conditions are met I needn't go into further detail. This means that my decision is directed primarily towards the level of compensation, if any, which Ms M should receive on behalf of herself and her family.

As Ms M complained about several different aspects of the holiday I'll deal with them separately.

A breach of contract usually involves the unjustified failure to fulfil the agreed conditions of the contract.

I don't think seat allocation difficulties on certain flights or problems with storage capacity for luggage are breaches of contract. Whilst a certain degree of inconvenience was experienced the fundamental contract involved an agreement to transport Ms M's party to and from their chosen destinations. That obligation was fulfilled. Similarly, whilst lack of in flight entertainment might be unfortunate, I don't think it amounts to a breach of contract.

I can't see any evidence that a specific type of vehicle was advertised for the transfer from airport to hotel. Nor am I in a position to judge the manner in which the vehicle was driven or the level of discomfort this might have caused. So I can't say there's been a breach of contract in this regard.

Apparently there was building work and resultant noise from works being carried out near to the first hotel the family stayed at. I understand the work was not being done on behalf of the hotel. I can't say that works being undertaken by a third party and outside the control of the hotel owners amounts to a breach of contract by them.

It seems it's agreed by NewDay that there was a breach of contract at the second hotel. This arose out of building work resulting in the unavailability of some facilities as well as noise. In addition there was a charge made for car parking which should have been included as part of the overall holiday cost.

I accept that the unavailability of some advertised facilities including a pool, bar and putting green, reduced the enjoyment and together with the issue of the noise from the building works this amounted to breach of contract.

And whilst the arrival of a large group attending a convention was unexpected by Ms M and her family, the reality is that it's largely a matter of chance as to with whom one may end up sharing a public facility such as a hotel. So I don't think there was any breach of contract in this regard.

I noticed that the extra parking costs had been invoiced to Ms M's partner. I can't award compensation directly to a third party - and I've also no information that the means of payment used was supplied by NewDay.

Similarly, I see that before their return flight, Ms M and her group engaged alternative transport when it appeared to them that their agreed transfer arrangements were not going to be fulfilled. This invoice is also in the name of Ms M's partner and looking at the account number, it seems to have been paid for using a different credit card to that used by Ms M when arranging the holiday. I've not seen anything to show NewDay issued this other credit card. I understand that Ms M accepts I can't look at this aspect of her complaint.

It's always difficult to quantify the loss of enjoyment of facilities as opposed to a direct financial loss. And whilst I'm not dealing directly with the offer of compensation made by B to Ms M's partner, it's relevant to the question of whether or not NewDay has dealt fairly with her claim.

I think that NewDay considered Ms M's complaint properly and took into account the issues she complained about. It recognised - correctly in my view - that Ms M's claim was made essentially on the same facts in respect of which B had already made a payment of compensation to her partner. And in considering her claim it was entitled to take note that in practical terms the claims were indistinguishable.

In deciding that the offer from B was sufficient to cover the entirety of the circumstances which affected Ms M and her family, it reached what I think was a fair and reasonable view based on the available information.

Whilst I know my decision will come as a disappointment to Ms M, I'm not going to be asking NewDay to do anything else. And I'm not upholding this complaint.

my final decision

For the reasons given above, my final decision is I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 27 October 2019.

Stephen D. Ross
ombudsman