

complaint

Mrs H complains that NewDay Ltd rejected their claim under S 75 Consumer Credit Act 1974 in respect of a hotel booking.

background

Mrs H has a credit card with NewDay Ltd. In early August 2014 Mrs H booked a three day break in the hotel for herself, her husband and their two dogs. She had looked at the website, but booked by telephone. She gave the hotel owner/employee her credit card details. No money was debited at this stage - it was just to confirm the booking. This was confirmed in writing by email on 15 August 2014.

On the Saturday 23rd August 2014, which was the summer bank holiday weekend, Mr and Mrs H and their two dogs arrived at the hotel late in the afternoon. They had driven from their home to the hotel, a distance of about 250 miles. On their arrival an altercation took place between Mr and Mrs H and the hotel owner concerning the behaviour of the dogs. There are differing accounts of what happened and what was said, but it ended with Mr and Mrs H not staying and driving back home on the same day. The hotel charged the credit card for £420 which was the cost of the three night stay. The terms and conditions of the hotel entitled it to charge for late cancellations.

Mrs H made a claim under S 75, but this was rejected by NewDay as it did not consider that the hotel had breached its contract. They brought the matter to this service. The adjudicator who considered the complaint recommended that it be upheld. She considered the key issue was whether Mr and Mrs H were asked to leave or whether they chose to leave after the altercation.

Of the two contrasting versions of the events of 23 August she found Mrs H's more compelling and noted that they had taken their dogs to other hotels without problems. In brief she considered it unusual for a couple to take the drastic step of driving back home such a long distance unless they had good reason to do so and it was more likely that they had not chosen to do so, but were either asked to leave or made so unwelcome they could not stay. She also was not convinced that as Mrs H had made the booking by phone that she was made aware of the hotel's cancellation policy.

The bank did not agree and said that Mrs H may have booked the hotel by phone, but she had looked at the website prior to this and the cancellation policy was set out there. It found the hotel owner's account more persuasive and said it welcomed dogs and had simply asked Mr and Mrs H to keep their dogs under control.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where necessary and / or appropriate, I reach my decision on a balance of probabilities – that is, what I consider is most likely to have happened in the light of the available evidence and the wider surrounding circumstances.

I find myself in agreement with the adjudicator in that, on balance, I find Mr and Mrs H's account more persuasive. The two dogs in question are not breeds that one would describe as large and the two character witness reports, including one from a policewoman, suggest

that both are well behaved. I am also satisfied that Mr and Mrs H have taken them to other hotels here and abroad without incident.

I gather that while waiting to complete the registration process the dogs were in the garden and were excited by cannon fire from a local event. Also I accept that they barked when coming into reception as they were spooked by something or someone. However, I do not consider the suggestion by the hotel owner that the dogs were snarling to be credible. Mrs H has said that they were told they could stay if their dogs didn't bark which I consider to have been an unreasonable request. The hotel owner disputes this, but I am satisfied that Mr and Mrs H were made to feel unwelcome at the hotel and in effect were forced to leave as they could not guarantee their dogs would not bark. On balance I consider Mr and Mrs H's behaviour to have been reasonable and it was unreasonable of the hotel not to have allowed them to stay.

I accept that it's reasonable for a hotel to expect guests to keep their dogs under control, but the issue is whether the level of control realistic. I understand that the hotel welcomes dogs and I presume it and its staff are used to dealing with them. I find it hard to understand why this disagreement escalated to the extent that Mr and Mrs H left.

Furthermore, I do not consider it likely that Mr and Mrs H would have considered a long drive home as something to be undertaken lightly and as experienced dog owners would have been able to maintain a reasonable degree of control over their dogs. In the circumstances I consider it more likely that they did not leave the hotel of their own volition and that there was breach of contract by the hotel.

my final decision

My final decision is that I uphold this complaint and I direct NewDay Ltd to reimburse (not credit) Mrs H £420 plus interest at 8% simple from 30 September 2014 until the date of settlement.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs H to accept or reject my decision before 30 July 2015.

Ivor Graham
ombudsman