

complaint

Miss T has complained that NewDay Ltd, trading as marbles, has rejected her claim for the costs of a hotel stay. She paid for the hotel using her marbles credit card.

background

In 2013 Miss T had a long-term stay in a hotel. Over the time she was there, she was concerned about the standard of accommodation and service she received and complained to the hotel. The hotel offered her £1,627.63 which was 20% off her total bill. Miss T did not think this was sufficient and claimed against marbles under section 75 of the Consumer Credit Act 1974.

Marbles did not feel there was sufficient evidence to show that there had been breach of contract by the hotel. Miss T brought her complaint to the ombudsman service.

Our adjudicator did not believe that the overall service that Miss T received amounted to a breach of contract and told her he could not recommend upholding her complaint. Miss T has asked an ombudsman to review her case.

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 the evidence is incomplete, inconclusive, or contradictory, as some of it is here, I reach my decision on a balance of probabilities – that is to say, what I consider is most likely to have happened in the light of the evidence that is available and the wider surrounding circumstances.

Section 75 provides that, under a very specific set of circumstances, a consumer may seek to recover money paid under a contract with a supplier from their credit provider. There can only be a valid claim under section 75, if it can be shown that the supplier has misrepresented or breached the contract. That means that I can only hold marbles responsible for the hotel's actions if I consider that the hotel made a false statement about the facts and this led directly to Miss T staying there. Or if I find that the terms of the contract were breached.

It's worth stating upfront that this case is not about misrepresentation, so I am only considering whether the standard of the accommodation and food received by Miss T and the service offered by the hotel amounted to a breach of contract.

It is fair for any customer to expect their hotel to provide a reasonable standard of accommodation and service, along with other facilities. An important factor that I have also considered is what action Miss T took when she felt that she was not receiving accommodation, food or service to the standard she was expecting.

Miss T stayed at the hotel in question for more than three months. And whilst I do not doubt that she raised her concerns with the hotel management – and she has confirmed to us that this is so – I note that she did not change hotels and stay elsewhere. I am satisfied that this option was always open to her and I do not know why she did not do this. I am aware that she stayed in a hotel across the road for a short period but she did return to her original hotel.

I have examined the information that Miss T has provided to this service, including photographs and a detailed list of her concerns that she provided to the hotel in November 2013. I hope Miss T does not think I am being dismissive if I do not refer to each of the issues she raised. However I am able to confirm that I reviewed all these individually to decide whether breaches of contract occurred.

In fact, I do not consider that some of the issues that Miss T raised would amount to a breach of contract. These include her concerns about staff rudeness and, for example, the lack of specific tea bags at breakfast. In addition I am not satisfied there is evidence to demonstrate what facilities were missing from her room: for example, shower gel or the waste paper bin. On balance, I do not consider that most of the concerns Miss T raised amount to a breach of contract. I accept that issues of cleanliness and noise levels can on occasion be considered as a breach but in this case, I am satisfied that it would not be fair to hold marbles liable.

I appreciate that Miss T feels extremely strongly about this case and I do not dispute that she was unhappy with the accommodation and service she received. However I do not consider it fair or reasonable to hold marbles liable for the problems she had when staying in the hotel in question.

my final decision

For the reasons stated above, my final decision is not to uphold Miss T's complaint against NewDay Ltd, trading as marbles.

Sandra Quinn
ombudsman