

The complaint

Mrs B complains that John Lewis Financial Services Limited won't refund her for some accommodation.

What happened

In September 2022 Mrs B used her John Lewis credit card to make a booking for just over £270 for what she thought was a hotel. On arrival at accommodation in October 2022 she says she realised the accommodation didn't have a restaurant, wasn't as near to the town as advertised and didn't have the amenities she expected. So she left and found suitable accommodation nearby. Thereby having to pay twice for accommodation. Mrs B says she explained to the accommodation the issue when she had arrived, but it wouldn't refund her.

So she complained to John Lewis about being misrepresented into making the booking. John Lewis looked into the matter and has said it didn't consider Mrs B's dispute should be successful through either chargeback or Section 75 of the Consumer Credit Act 1974.

Mrs B didn't think this was fair, so she brought her complaint to our service. Our investigator looked into the matter. Overall, she didn't think John Lewis had acted unfairly by declining Mrs B's request for a refund. Mrs B didn't agree. So the complaint has been passed to me to decide.

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.

I should make very clear that this decision is not about the accommodation, or the website Mrs B used to find the accommodation, which aren't financial services providers and don't fall within my remit regarding chargeback or Section 75. Whatever the issues there maybe with the accommodation or the website and just because Mrs B says she has lost out here, it doesn't necessarily follow that John Lewis has treated Mrs B unfairly or that it should refund her. And this decision is solely about how John Lewis treated Mrs B. I hope this point is sufficiently clear.

There's no dispute that Mrs B used her John Lewis card to make the booking.

In certain circumstances, when a cardholder has a dispute regarding a transaction, as Mrs B does here, John Lewis (as the card issuer) can attempt to go through a chargeback process. I don't think John Lewis could've challenged the payment on the basis Mrs B didn't properly authorise the transaction, given the conclusion on this issue that I've already set out.

John Lewis is required to consider whether there is a reasonable prospect of success when it is considering whether to go through the chargeback process or not. If it does go through the process, then it must do so properly. And if John Lewis takes the chargeback as far as it can then the scheme provider (not John Lewis) will then make an independent determination on the matter. So John Lewis isn't solely responsible for the decision whether to refund or

not, when going through the chargeback process. And it can fairly decide to not proceed at any stage if it doesn't think there is a reasonable prospect of success.

Here John Lewis didn't raise a chargeback. It said it didn't consider Mrs B had a reasonable prospect of success because it says the accommodation didn't advertise it had a restaurant, didn't call itself a hotel and its location in relation to the town wasn't misrepresented. It said it also considered that a claim under Section 75 of the Consumer Credit Act 1974 (CCA) should be unsuccessful also.

There are some requirements set out in the CCA which have to be met before deciding whether there was a breach of contract or misrepresentation by the accommodation. However I don't think I need to make findings on these requirements because I'm satisfied Mrs B hasn't been misrepresented to and I'm not persuaded there has been a breach of contract either. I've also decided that a chargeback didn't have a reasonable prospect of success and that a S75 claim should be unsuccessful for the following reasons.

I've considered the advert carefully. It is of note that the accommodation doesn't call itself a hotel in the main description section of the advert. It lists its amenities and in the list there is no mention of a restaurant. So it hasn't falsely claimed to have a restaurant. Mrs B points to the fact she used the search criteria of 'hotel'. However the website search criteria for your 'stay' is based on location and dates. It specifically says when you search that it will provide listings of "*hotels, homes and much more*". So clearly all types of accommodation will come up in the search.

Mrs B also points to the presence of the word "hotel" in the description. I've considered this point specifically and I note that it is present towards the bottom of the description and is in a standardised listing section of the advert setting out the amenities of the accommodation (parking and internet). Throughout the rest of the advert the accommodation is referred to as the 'property'. It makes very clear all the services it provides and in the section relating to meals it says breakfast is included. There is no mention of a restaurant or the provision of other meals. Mrs B's argument seems to be here that because the word hotel is present that must mean a restaurant is expected to be present. However the advert makes no mention of a restaurant and makes clear the only meal provided is breakfast. So considering the advert in the round I'm not persuaded Mrs B has been misrepresented here about the accommodation's services.

I've considered Mrs B's arguments about the accommodation being more than the "*450m from centre*". She says it's nearer a kilometre away and provides a map to show that, however I note on that map she's provided she's arbitrarily decided where the 'centre' is. Clearly the town's centre could be defined in a variety of ways including where the centre is and how large the centre would be. I'm not persuaded that this statement in the advert is factually incorrect due to the subjectivity of what the centre is and considering the location of the accommodation in relation to the majority of shops and amenities nearby.

Mrs B argues why would she decide on arrival that the property didn't meet her needs unless she'd been misrepresented to. I'm not persuaded by this argument. It's clear from Mrs B's own testimony that she was expecting the accommodation to have a restaurant despite the fact that the advert makes no mention of a restaurant and makes clear it only provides breakfast. It seems clear Mrs B's expectations weren't in line with the description provided. And those expectations were not due to the description in the advert.

Mrs B says there is a lack of transparency in the advert. I'm not persuaded by this. I think the advert makes clear what the accommodation provides. It is not the responsibility of the advert if Mrs B makes assumptions about the hotel's amenities which weren't listed on the accommodation's list of amenities.

Mrs B says that the money for the booking was taken earlier than she expected. I've considered the terms and conditions and I'm not persuaded there was a failing there. And in any event Mrs B says she arrived at the accommodation on the day of the booking. And considering the terms it is clear the full amount is chargeable whether Mrs B stayed or left the property as she has explained.

I've also considered Mrs B's comments in response to the assessment of the investigator. She says that because of what she describes as misrepresentations there is no contract here. Mrs B's analysis fails for two reasons, firstly I'm not persuaded that there are material misrepresentations here, so I see no persuasive reason to consider John Lewis' consideration of a S75 claim here to be incorrect. And secondly even if Mrs B's arguments were persuasive it wouldn't void the completed contract between Mrs B and the accommodation, it would require John Lewis to provide remedy on a like basis to Mrs B as if it were the accommodation.

In summary I think that Mrs B hasn't lost out here due to what John Lewis did. I think John Lewis made a fair decision in not pursuing the chargeback. And I don't think it could be held responsible under S75 either as I'm not persuaded a material misrepresentation or breach of contract has been made out as the booking was provided (but not utilised by Mrs B). So I don't think I can fairly require John Lewis to refund Mrs B. So this complaint is unsuccessful.

Mrs B has asked whether this decision precludes her from taking the matter to court. If she doesn't accept this decision there is nothing to stop her taking the matter to court as this decision is only binding if she accepts it. However I would urge Mrs B to take independent legal advice (at her own cost) before embarking on such a course of action in order to be able to make an informed decision about such legal action and the consequences and ramifications of such.

I do appreciate that this isn't the decision Mrs B wants to read. But I don't think John Lewis treated her unfairly.

My final decision

For the reasons set out above, I do not uphold the complaint against John Lewis Financial Services Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 11 December 2023.

Rod Glyn-Thomas
Ombudsman