

## **The complaint**

Mr Z has complained NewDay Ltd, trading as Debenhams Store Card, did little to help after he complained about a payment he'd made under duress for £1,000 whilst overseas.

## **What happened**

Mr Z was on holiday in April 2019 with family. They hired a couple of jet skis. After a small collision their hire period was brought to an end. The people who'd hired the jet skis asked Mr Z to pay £1,450 in compensation. Mr Z disputed there was any damage but felt threatened enough to pay the money. He did this by using a debit card and his Debenhams store card. This was debited for £998.45.

He complained to NewDay practically immediately and told them what had happened. In mid-May after the return of paperwork, NewDay processed this transaction as a chargeback. This was done on the basis Mr Z had been debited an unreasonable amount. As Mr Z had used his own card and entered his PIN, this claim proved invalid.

NewDay said there was nothing else they could do to assist. They offered Mr Z £25 compensation for not processing his subject access request appropriately.

Mr Z brought his complaint to the ombudsman service. Our investigator felt NewDay could have processed the chargeback under different grounds – for example no goods or services received. This specifically would deal with the fact that the merchant that processed this transaction deals in the wholesale trade of liquid fuels. He asked NewDay to refund the disputed transaction in full and repay the additional exchange costs that occurred when NewDay re-debited this amount from Mr Z's account in August 2019.

NewDay didn't agree with this outcome. They continued to believe that as Mr Z was threatened to make this transaction, he should have managed this by reporting the matter to the police.

This complaint has been referred to an ombudsman for decision.

## **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.

Having done so, I've come to the same conclusion as our investigator and for roughly similar reasons. I'll explain why.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. That includes the card schemes' chargeback rules.

The Payment Services Regulations are also relevant here. These primarily require banks to refund customers if they didn't make or authorise payments themselves. Certain other

circumstances can apply. So when we look at whether a bank has acted fairly in rejecting someone's fraud complaint, one of the things we consider is whether the customer made the transactions themselves or allowed them to be made. If they did, then we generally wouldn't ask the bank to refund them.

So to help me decide what happened, I've looked at the evidence of the disputed transaction, as well as what NewDay and Mr Z have told us. I can see the timeline of events and each party's testimony were covered in detail in our investigator's view of 17 July 2020. I don't intend to repeat everything that was said there. I will, of course, refer to those aspects which form the basis of my decision.

Firstly it's clear to me that Mr Z authorised the transaction. I appreciate he did this under duress – and I don't dispute his testimony about this – but that unfortunately means in law he authorised the payment.

However that doesn't mean there were no grounds for NewDay to assist Mr Z. NewDay could raise a chargeback or they could consider Mr Z's rights under section 75 of the Consumer Credit Act 1974.

NewDay has taken the stance that because Mr Z authorised the transaction, they had no wiggle room under the chargeback rules. But I disagree. It seems clear to me that if Mr Z made a transaction for £1,000 or thereabouts to a wholesaler of liquid fuels, I'd expect to see some goods or services in return. There's no evidence Mr Z received anything. This would mean that this claim would have been successful for the reason of *goods or services not provided* under the chargeback rules. I also suspect there would have been sufficient grounds for a successful claim under section 75.

### **Putting things right**

As I believe this claim would have been successful under the correct chargeback rules, I think it's fair and reasonable that NewDay reimburse Mr Z.

They will need to reimburse the amount Mr Z was re-debited (which include additional costs as the exchange rate had changed in the interim) to ensure that Mr Z is not out of pocket for this transaction.

I think Mr Z has repaid his NewDay account in full so when NewDay reimburse him, they'll need to add 8% simple interest to the refund.

NewDay paid Mr Z £25 compensation for delays in processing his subject access request. I'm increasing the compensation payable to a total of £125 so NewDay will need to pay Mr Z a further £100. I say this because of the errors they made and the impact these had on him.

### **My final decision**

For the reasons I've given, my final decision is to instruct NewDay Ltd, trading as Debenhams Store Card, to:

- Reimburse the money debited to Mr Z's account for the disputed transaction, including the fees and additional costs due to exchange rate fluctuation;
- Add 8% simple interest to that refund from the date Mr Z paid his account in full until the date of settlement; and
- Pay Mr Z an additional £100 for trouble caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 20 January 2021.

Sandra Quinn  
**Ombudsman**