

The complaint

Ms B is unhappy with how NewDay Ltd handled her request for a refund for flights she had booked using her credit card.

What happened

Ms B booked flights with a travel agent who I will refer to as T. The outbound flight was booked for 18 March 2020 with a return date of 9 April 2020. The total cost of the flights was £1,289.14.

On 16 March 2020 Ms B said she tried to call T but was unable to get through, so she emailed it instead. She explained that she was due to travel in a few days but given that the UK government began issuing guidance on restricting movement, in light of the Covid-19 pandemic, she didn't believe it would be safe for her to travel. And so, she requested a full refund for the flights.

T responded on 3 April 2020 to say that whilst Ms B could make changes to her flights, Ms B may need to speak with her travel insurance provider to claim any money back for a refund. Ms B responded to say she didn't consider the proposal reasonable and still wanted a full refund. She continued to correspond with T but didn't receive any responses back. Ms B also emailed and phoned the airline directly. She said she was told the flights she'd booked had been cancelled and the flight cost had already been refunded to T in March 2020. Ms B was unhappy as T hadn't informed her about this at any stage.

Ms B contacted NewDay to ask it to help get her money back on 8 April 2020. NewDay sent her a disputed transaction disclaimer form to complete. On 27 April 2020 Ms B emailed some further information back to NewDay but didn't provide the disclaimer form. NewDay sent a chaser to Ms B on 29 April 2020 for the disclaimer form, and whilst it received further evidence from Ms B, it still didn't receive the disclaimer form.

On 4 May 2020 Ms B emailed NewDay attaching the disclaimer form as requested. A chargeback was then processed on 6 May 2020 by NewDay and a temporary credit was applied on 21 May 2020. The amount appeared on Ms B's June 2020 account statement.

Ms B continued to email NewDay saying she was unhappy with the delays, was looking for an update and asked NewDay to speak to her daughter. On 21 May 2020, after receiving Ms B's authorisation, NewDay spoke to Ms B's daughter and explained the progress of the chargeback claim and how it had been raised successfully.

On 24 May 2020 Ms B emailed again asking for an update and also for information NewDay had on her complaint. On 10 June 2020, Ms B requested a copy of NewDay's complaints process. She explained why she was unhappy with its handling of her chargeback claim and how neither her or her daughter had been updated or contacted.

NewDay sent an acknowledgement letter on 3 July 2020 to Ms B. On 4 July 2020, Ms B emailed NewDay to say it had failed to respond to her and asked it to forward a copy of all the information it held on her regarding her complaint and its complaints procedure.

A response was sent by NewDay explaining it had already sent an acknowledgement, with the complaint's procedure to her home address on 3 July 2020. It provided Ms B with a complaint case reference and asked if she wanted all the information related to her complaint, and if so, it could submit this request as a General Data Protection Regulations information request, or otherwise known as a Data Subject Access Request (SAR).

On 7 July 2020, Ms B's account was permanently credited with the cost of the flights, as T didn't defend the chargeback, with the funds then being transferred to her current account.

On 10 July 2020 Ms B asked who had logged her complaint and asked for the SAR to be processed. She also said if the chargeback matter was resolved by then, then NewDay potentially may not need to forward this to her.

On 13 July 2020 NewDay responded to say it had submitted her SAR. It also said it had eight weeks to investigate her complaint, and that a response would be provided, but this wouldn't be by email. There continued to be an exchange of correspondence between Ms B and NewDay about her complaint.

On 22 July 2020 NewDay sent an update letter advising it was sorry, but its investigation was taking longer than expected. Ms B then contacted our service on 25 July 2020 because she didn't receive a response to her complaint.

On 6 August 2020, NewDay sent its final response letter to Ms B. NewDay in summary said her claim had taken a long time to resolve and she wasn't always contacted as requested. It apologised and credited her account with £40 for the trouble and inconvenience caused.

In relation to the SAR, which was requested by Ms B in July 2020, NewDay explained that it had sent this to her email address on 13 August 2020. Ms B explained she hadn't received this, so NewDay sent a further email on 30 December 2020, with details on how to access the information under the SAR. Ms B emailed on 31 December 2020 to say as nothing had been received again, she wanted a response from NewDay's data protection officer.

A final response letter for the SAR was sent on 13 January 2021. NewDay said the previous SAR request had been sent to an incorrect email address held on the account. However, NewDay explained that this incorrect email address had been present on Ms B's account records since 2015 and was the same one used for when her account was registered for its online account manager services. NewDay went on to say that the first email from 13 August 2020 hadn't been opened and it had since taken steps to ensure her information couldn't be accessed via this email. NewDay acknowledged its error and sent the information by post to Ms B and awarded her £70 compensation for the error.

Ms B remained unhappy and referred her complaint to our service. When our investigator looked at the complaint she thought whilst there appeared to be an initial delay in the chargeback being raised, NewDay was waiting for further information from Ms B, which she thought was necessary. Once NewDay received this information, the investigator thought it had progressed the chargeback and applied a permanent credit without any unreasonable delays.

With regard to Ms B requesting updates and not always receiving the service she should have received, the investigator felt NewDay's £40 compensation offer was fair. In relation to the SAR and the error with the email address, the investigator thought the additional £70 offered by NewDay was also fair.

Ms B disagreed with the investigator's view. In summary, she said NewDay didn't update her and was unwilling to speak to her daughter. She said she didn't receive the letters NewDay claimed to have sent, and NewDay had also admitted the SAR was incomplete and therefore failed to comply with the request. She also mentioned how she felt her complaint should've been logged earlier than it was.

The investigator provided further clarification and evidence to demonstrate NewDay had spoken to her daughter with her authorisation and had kept her updated. For any other shortcomings she still felt the £40 offer was fair. In terms of the SAR the investigator explained the Information Commissioner's office was the correct organisation to look at any failings NewDay had done in relation to the SAR and the £70 NewDay had offered was fair.

As Ms B remained unhappy with the investigator's view, the case has now been referred to me to make a final decision on.

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 considered everything very carefully, I've reached the same conclusion as our investigator.

Ms B has made a number of points, but we're an informal dispute resolution service, set up as a free alternative to the courts. In deciding this complaint I've focused on what I consider to be the heart of the matter rather than commenting on every issue in turn. This isn't intended as a discourtesy to Ms B. Rather it reflects the informal nature of our service, the remit of the Financial Ombudsman Service and my role in it.

It might be helpful if I start by explaining that in some cases, a bank may be able to request a refund from the supplier through the chargeback scheme. This is a way in which payment settlement disputes are resolved between card holders and suppliers/merchants. They are dealt with under the relevant card scheme rules and in this case that's Mastercard's. In certain circumstances the process provides a way for NewDay to ask for a payment Ms B made to be refunded. Those circumstances include where goods or services aren't supplied by the company Ms B paid.

There's no obligation for a card issuer to raise a chargeback when a consumer asks for one. But I would consider it good practice for a chargeback to be attempted where the right exists and there is reasonable chance of success.

In this case, it appears that Ms B wasn't provided with the service that she originally paid for. And in normal circumstances, it would seem reasonable to expect NewDay to raise a chargeback for her, as I'm satisfied that this scenario is one that is covered within Mastercard's chargeback rules.

It's not unusual for a chargeback to take some time to process. It can take time for a bank to gather the correct and necessary information needed to raise the claim, and the chargeback rules also require banks to give suppliers time – usually around a month - to respond to any chargeback raised, in case they want to dispute it.

I can understand that this whole experience was worrying and stressful for Ms B. She'd paid for flights, and from what she's said, the experience with T would've caused her anxiety when it offered her the chance to only change her flights to a future date, and not a full refund, and then later stopped communicating with her. But I can't hold NewDay responsible

for any of this and ultimately it was T who caused the initial problems here when it didn't give her money back when it seems it should have.

I also need to take into account that these weren't normal circumstances; it was an unprecedented and unusual time for the banks, when Ms B first contacted NewDay, dealing with significant numbers of enquires from consumers looking to get money back as the global pandemic unfolded. Many of these claims will have brought up issues which were relatively novel, and the banks were having to digest new information, rules and guidance at a very unusual time. And many firms faced operational challenges during this period.

Although both Ms B and NewDay have confirmed that the chargeback was ultimately successful, and Ms B received a full refund for the flights, Ms B has made a number of comments regarding the poor service she received from NewDay. She has spoken about the delays with her chargeback being raised, not being kept updated when requested, not receiving NewDay's update letters, and NewDay failing to comply with the SAR request.

I will deal with each of these concerns in turn:

Delays with raising the chargeback

Ms B first contacted NewDay to raise a chargeback dispute in April 2020. NewDay explained that whilst it logged the chargeback in April 2020, it couldn't progress this further without the disclaimer form, which it only received from Ms B on 4 May 2020. Once this was received, it processed the chargeback two days later, on 6 May 2020, and applied a temporary credit on her account on 21 May 2020. The temporary credit was then made permanent in July 2020 when T didn't defend the chargeback.

I appreciate Ms B has questioned the disclaimer form NewDay was relying on and explained that she provided information to NewDay when it was requested. However, having reviewed all the emails and correspondence between her and NewDay, I am firstly satisfied that the disclaimer form was only sent by Ms B on 4 May, and secondly that NewDay had processed the chargeback without causing any unreasonable delays following receipt of the form.

Whilst I appreciate Ms B had provided other information to NewDay, prior to the disclaimer form being sent on 4 May 2020, with all that was going on, I can understand why in this particular case NewDay might've needed to stick to a strict process, to ensure the efficient operation of refunding claims.

NewDay in its initial letter sent to Ms B, explained how to proceed with the investigation and refund her claim, it required Ms B to complete the form, to support her claim. NewDay sent a chaser letter when it hadn't received the form, and once Ms B sent this, it processed the chargeback two days later and applied a temporary credit around two weeks after. So, all in all from when Ms B first contacted NewDay and provided all the relevant and required information, she was waiting just under a month for a temporary credit to be applied, which was then made permanent after T didn't defend the chargeback. And so, I can't agree that NewDay caused any unreasonable delays when processing the chargeback.

Not being kept updated

Ms B has expressed her unhappiness at how NewDay didn't keep her updated and didn't speak to her daughter when she requested. Having reviewed all the evidence and system notes, I am satisfied that overall NewDay did keep her updated with her chargeback claim. I can see that the investigator provided Ms B a copy of the screenshot notes of communication between her and NewDay, and from this it can be seen that on 21 May 2020, after receiving Ms B's authorisation, NewDay spoke to her daughter and explained the

progress of the chargeback claim and how it had been raised successfully. And so, I am satisfied that Ms B's daughter, who Ms B gave authorisation for NewDay to speak to, knew her chargeback claim had been processed and would have been made aware about what was happening with the chargeback claim and the next steps too.

Although I am satisfied NewDay did keep Ms B updated overall, I can see that when she raised a complaint with NewDay, and was contacting it for updates, NewDay sometimes took a little longer to respond to her emails. There was also some confusion and delays caused because of the email address Ms B was using to ask NewDay for updates.

However, I can see that NewDay in its final response letter also agreed that she was not always contacted when requested and provided her £40 as compensation for this. I also consider £40 to be fair and reasonable in the circumstance of the complaint.

I appreciate Ms B has explained that she didn't receive all the acknowledgement and update letters NewDay claims to have sent her. However, NewDay has provided evidence to show that these letters were sent at the address it held on file for her, which is Ms B's current address. And so, I am satisfied these letters were sent by NewDay and that it did communicate and try and keep her updated throughout the process.

SAR

Ms B has explained that NewDay failed to comply with her SAR request, but my role isn't to penalise NewDay if it has committed any potential breaches of information rights law. Rather, I'm deciding how NewDay handled Ms B's request for information – and the impact on her if it didn't provide this, how or when it was supposed to.

NewDay doesn't dispute it made an error – it acknowledged that it responded to Ms B's SAR request initially, and although this was sent to the email address it had on file for her from 2015, and from when her account was registered for online account manager services, this email address was later found to contain a mistake. I appreciate that following contact from Ms B, and NewDay updating her email address, Ms B has now received the response to her SAR, albeit later than it should have been from when she first raised her initial SAR request.

I've thought about the impact on Ms B of having to wait to receive what should've been sent earlier and also for the SAR being sent to another email address. However, I've also given consideration to the fact that NewDay recognised its error, apologised for how it handled her SAR, took appropriate steps to ensure information from the previous SAR couldn't be accessed, and offered £70 compensation to recognise the trouble and upset caused to Ms B. And taking everything into consideration, I think this is a fair and reasonable amount of compensation to reflect the distress and inconvenience caused to Ms B.

Although I appreciate Ms B's strength of feeling about how NewDay handled things, I'm not persuaded any further compensation needs to be made in respect of the error for the SAR.

My final decision

For the reasons explained above, my final decision is that the £110 compensation NewDay Ltd offered to pay Ms B is fair and reasonable and I make no further awards.

On Ms B's acceptance of this decision, NewDay Ltd should pay Ms B this sum if it hasn't already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 11 January 2022.

Farhana Akhtar
Ombudsman