

The complaint

Mr S is unhappy that NewDay Ltd didn't refund a payment he'd made.

What happened

In April 2020, Mr S ordered a number of bottles of alcohol from an overseas online retailer I'll call G. The order totalled £1,123.70. He paid this using his NewDay credit card branded as Aqua. A courier service then delivered this order the following month. Mr S told us he signed to confirm receipt of the goods. But when he opened the boxes, he says almost half the order was missing. He told us he thought maybe the order was arriving in two deliveries due to its size.

Later the same day, Mr S emailed G asking when he would receive the rest of his order. When he didn't get a reply, he emailed again a few days later. G replied straight away saying all four parcels were delivered by the courier a few days earlier. Mr S told G that while he'd received a delivery, this hadn't contained his whole order.

Again, G replied straight away asking him to send pictures of the parcels with the goods inside as it needed this to look into what could have happened and to open an investigation with the courier. But Mr S said that while he could send pictures of the goods, the packaging had already been thrown away.

As Mr S couldn't resolve the issue with G, he got in touch with NewDay. It credited the amount of the disputed items - £564.36 – back to his credit card account while it tried a chargeback with the card scheme operator. This was in June 2020. NewDay told Mr S this amount could be debited back to his account if G challenged the chargeback.

G did indeed challenge this, telling NewDay the order had been completed and Mr S had signed for it. The disputed amount was re-debited to his account on September 2020. Mr S wasn't happy with this, so NewDay looked at a claim under Section 75 of the Consumer Credit Act 1974 (S75). When he didn't hear anything, Mr S complained. While NewDay was looking into the complaint, it told him it had rejected his S75 claim.

Shortly after, NewDay issued its final response to Mr S's complaint. In short, it said: NewDay had correctly followed the chargeback process; and, the S75 claim had been unsuccessful. But, as a gesture of goodwill, NewDay did refund fees totalling £36 which had been charged when the re-applied transaction took Mr S over his credit card limit.

Mr S wasn't happy with this response, so he brought his complaint to our service. One of our investigators looked into this issue. In summary, she didn't think NewDay had done anything wrong as the evidence didn't show there'd been a breach of contract by G.

Mr S didn't accept our investigator's view. He told us that while the right number of boxes arrived, there were a lot less bottles inside than there should have been. Mr S was also unhappy with the thoroughness of NewDay's investigation. He said NewDay had his complaint for months and when he chased a response, he was told it hadn't been looked into yet – but about an hour later he was told his S75 claim had been rejected.

As the matter remains unresolved, it's been passed to me for a final 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 decided not to uphold it. I'll explain why. But first I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here: did NewDay treat Mr S fairly and reasonably when it didn't refund the disputed amount of £564.36 to him?

If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is a fair outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

A chargeback is a way in which payment settlement disputes are resolved between card issuers, such as NewDay, and merchants. These disputes are dealt with under the relevant card scheme rules. In certain circumstances, the process provides a way for NewDay to ask G to refund part of the payment Mr S had made. These circumstances would include where all of an order wasn't delivered, which is what Mr S told us happened here.

A chargeback doesn't guarantee a refund. A merchant can defend any chargeback claim. When that happens, NewDay can pursue it further through the chargeback scheme. There's no obligation on NewDay to submit a chargeback or pursue it further if it's then defended. But I would consider it good practice for a chargeback to be attempted where the right exists and there is a reasonable prospect of success.

I've looked at NewDay's records. I can see that based on Mr S's testimony, NewDay submitted a chargeback to G for the goods he said he hadn't received. NewDay credited Mr S's account with the disputed amount of £564.36 in early June 2020. At the same time it told him in writing this amount could be debited back to his account if G provided more details. That's exactly what happened. G defended NewDay's chargeback attempt.

Within the timescale set out in the card scheme provider's rules, G sent evidence that the delivery had been made in full and told NewDay Mr S had signed for his order. I've looked at this evidence. It shows a stamped delivery note with details of the full order. While it's not dated, it shows a delivery time of 11:07. I would note at this point that Mr S doesn't dispute he signed for the delivery.

With this evidence from G that the order had been delivered in full and signed for, I can fully understand why NewDay didn't pursue the chargeback further. It had the option to ask the card scheme provider to arbitrate on this. I would have expected NewDay to do this if there was a reasonable prospect of success. But Mr S wasn't able to back up his testimony that delivery was incomplete, such as photos of the delivery packaging to show what was missing.

After weighing up the evidence from G against Mr S's verbal testimony, I can fully understand why NewDay decided not to pursue the chargeback further. So it debited £564.36 back to Mr S's account. This was around September 2020. As he'd made further purchases, this took him over his credit limit. Taking all this into account, I'm satisfied

NewDay followed the chargeback process as I would expect and treated Mr S in a fair and reasonable way.

To try and assist Mr S further, NewDay then looked at a S75 claim for him. Its records show this happened mid-September 2020. S75 sets out that in certain circumstances, as the provider of the finance used to purchase the goods, Mr S has a like claim against NewDay for any breach of contract or misrepresentation by G. I'm satisfied those circumstances apply here.

I know NewDay has said S75 doesn't apply because the goods were delivered by a courier. Its position is that this breaks the debtor, creditor, supplier (DCS) link between G, Mr S and NewDay that's needed under S75. I don't agree. I think the courier was acting on behalf of G here and this doesn't break the DCS link. So, as above, I'm satisfied the circumstances required for a S75 claim were present.

For there to be a successful claim under S75, Mr S needs to demonstrate that G made a misrepresentation about what he was buying or that there's been a breach of contract. It's not been suggested at any point that G misrepresented the goods to Mr S. He was expecting alcohol and he received the type of alcohol he'd ordered. It's the quantity he's disputing. Instead, Mr S is claiming under S75 that there's been a breach of contract as not all of his order has been delivered.

But, similar to Mr S's chargeback claim, other than his testimony, he's not been able to provide anything to back up that the delivery was incomplete. He's also confirmed to both us and NewDay that he signed to say he received the delivery. When Mr S raised the issue with G, it quite reasonably asked him for pictures of the parcels that had been delivered showing what goods were inside. G also told Mr S it needed a photo of the parcels so it could open an investigation with the courier. But Mr S couldn't provide any of these as he'd already thrown away all the packaging.

Again, after NewDay weighed up Mr S's testimony against the information provided by G, I can understand why it didn't think a breach of contract had been demonstrated, and why it then rejected the S75 claim. Once more, I'm satisfied this was a fair and reasonable course of action for NewDay to take.

I know Mr S feels that NewDay didn't investigate this matter properly. He says he was told his complaint hadn't been looked at yet, but then he got a call around an hour later rejecting his S75 claim. I would point out here that while Mr S, quite understandably, is treating his complaint to NewDay and his S75 claim as one issue, they are quite distinct. NewDay raised the S75 claim for him in mid-September 2020. Then, some weeks later, when he hadn't heard anything, he complained.

NewDay then raised a complaint for him. I can see it wrote to him on 27 November 2020 and on 24 December 2020 saying it was still looking into his complaint and apologising for the delay. NewDay then sent Mr S its final response to his complaint on 28 December 2020.

But while NewDay was dealing with the complaint, it was also dealing separately with his S75 claim. So when Mr S was told his complaint hadn't been dealt with yet, but then was told later that same day his claim had been rejected, this didn't mean NewDay only started looking at his S75 claim that day. As above, I can see it started looking at his S75 claim around three months earlier. In any event, I'm satisfied NewDay dealt with the S75 claim as I would expect it to.

In summary, in the circumstances outlined above, I think NewDay dealt with Mr S's chargeback and S75 claim in a fair and reasonable way. I'm also satisfied it didn't treat him

unfairly or unreasonably by not giving him a refund. For these reasons, I'm not upholding this complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 July 2021.

John Miles

Ombudsman