

The complaint

Mr L complains that NewDay, trading as Aqua, won't refund to him the money that he paid for some gaming credits.

What happened

Mr L used his Aqua credit card, which was provided by NewDay, in January 2021 to pay £399.72 for some gaming credits. He contacted NewDay because he says that he hadn't received the gaming credits and his access to some games had been blocked. NewDay made a chargeback claim and contacted the supplier which provided evidence that the gaming credits were supplied to Mr L so NewDay held him liable for the transaction. Mr L wasn't satisfied with its response so complained to this service. He says that the supplier has provided fraudulent evidence which was accepted by NewDay without it reviewing the additional evidence that he'd provided.

Our investigator didn't recommend that Mr L's complaint should be upheld. She thought that NewDay's decision not to take the chargeback claim any further given the evidence that it had received was reasonable. She said that NewDay should also have considered Mr L's request for a refund under section 75 of the Consumer Credit Act 1974 - but she said that the debtor-creditor-supplier relationship required for a successful claim under section 75 wasn't present in these circumstances.

Mr L has asked for his complaint to be considered by an ombudsman. He says that he never received the gaming credits that he paid for and he's described the historic issues that he's had with the gaming company.

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 agree with the conclusions reached by our investigator for these reasons:

- if a consumer disputes a card payment, the card issuer may be able to make a chargeback claim to the supplier under the relevant card scheme to try to settle the dispute – but there's no right for a consumer to require that a chargeback claim be made;
- if the right to make a chargeback claim exists under the applicable scheme rules – and if there's a reasonable prospect of success – I consider it to be good practice for a chargeback claim to be made;
- NewDay made a chargeback claim for the payment that Mr L disputed and it contacted the supplier which provided evidence that the gaming credits were supplied to Mr L;
- Mr L says that that evidence is fraudulent and that he didn't receive the gaming credits – but I'm not persuaded that he's provided enough evidence to show that the

supplier has acted incorrectly and I consider that it was reasonable for NewDay to rely on the evidence provided by the supplier;

- Mr L says that his access to some games has been blocked by a gaming company – but that is action taken by the gaming company as a result of Mr L’s breaches of its terms and conditions and isn’t something that’s either been done by the supplier of the gaming credits or for which it is responsible;
- as the supplier had provided evidence to show that the gaming credits were provided to Mr L, I consider that it was reasonable for NewDay not to take the chargeback claim any further and to hold Mr L liable for the payment of £399.72;
- I agree with our investigator that NewDay should also have considered his claim under section 75 – but, if it had done so, I consider it to be more likely than not that it would have concluded that the debtor-creditor-supplier relationship required for a successful claim under section 75 wasn’t present in these circumstances so it wouldn’t have considered his claim any further;
- even if NewDay had accepted that there was the required relationship between the debtor, the creditor and the supplier, I consider it to be more likely than not that it would have concluded that there wasn’t enough evidence to show that there had been a breach of contract or misrepresentation by the supplier so it wouldn’t have upheld his claim; and
- I find that it wouldn’t be fair or reasonable in these circumstances for me to require NewDay to refund to Mr L the £399.72 that he paid for the gaming credits, to pay him any compensation or to take any other action in response to his complaint.

My final decision

My decision is that I don’t uphold Mr L’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr L to accept or reject my decision before 17 November 2021.

Jarrold Hastings

Ombudsman