

The complaint

Mrs B complains that NewDay Ltd had failed to assist her with a chargeback, to refund money for goods which never arrived.

What happened

Mrs B told us that she placed an order with an online retailer in July 2020. The retailer took a payment of £85.97 straight away, although her order was for almost twice that much. Then she got an email saying some of her goods were delayed.

Mrs B didn't receive any of the items forming any part of her order. She tried to get in touch with the store, completed online forms, and tried to cancel so she could get a refund. Nothing worked, so she contacted NewDay to help get her money back.

Mrs B has shown us emails from the retailer saying that £84.99 was refunded on 30 November, but also separate emails from the same retailer, saying that no payment was taken because the payment was reversed on 7 September. She says that she's never received either of those payments, and NewDay hasn't contested this.

Mrs B said that a refund did appear on her account in October 2020, but then it disappeared again in November 2020.

NewDay said that Mrs B had raised a chargeback, and it had processed this for her. But this chargeback was unsuccessful. NewDay said that Mrs B should have raised her chargeback as "*goods not received*" because she had never received the item. But it was raised as "*refund not received*". To make a chargeback for "*refund not received*" Mrs B would have to show that the retailer had promised to pay the money back, then not paid it. But here, NewDay said, Mrs B didn't actually have any confirmation that she was promised a refund by the retailer.

NewDay said that the retailer had defended this chargeback on the basis that it hadn't received any returned goods that it needed to refund. NewDay said it only had one chance to raise a chargeback, and as this had failed, it couldn't now help Mrs B.

Our investigator thought this complaint should be upheld. He said he could see that the money had left Mrs B's account for this order, and hadn't been paid back by the retailer. Our investigator set out the efforts that Mrs B had made to complain about this to NewDay, and to ask it to help. Mrs B had been directed to the online portal to make a chargeback request, which she did.

Our investigator said NewDay had shown us the screens that Mrs B had to complete to make a chargeback, but he hadn't been shown what evidence or details Mrs B entered. He thought though that a "*refund not received*" chargeback was raised. He said he understood there wasn't much supporting evidence supplied by Mrs B on that form about the dispute, but he thought she'd made herself clear in previous discussions.

Our investigator said NewDay had submitted a "*refund not received*" chargeback, but the

retailer disputed this, saying it hadn't received returned goods that it needed to refund. Our investigator thought NewDay should've asked Mrs B for further evidence, rather than just process an incorrect chargeback. He thought that NewDay had provided poor customer service, and it should pay Mrs B £100 to make up for that.

Mrs B accepted this. But NewDay didn't. It set out the detail of what Mrs B had told it. It said she'd initially raised this as a transaction not recognised, then said that she'd made a purchase but cancelled it. Then she said that the retailer told her it had made a refund, but she hadn't received this. A missing refund query was raised.

NewDay said it was after this that Mrs B raised her chargeback request, and she did so online. NewDay said it didn't see the information Mrs B supplied for this chargeback before it was made. That's because it has no input into chargeback requests which are made online. But NewDay said it could see now that Mrs B had noted this as a refund not received request, and had provided no evidence that a refund was promised.

Our investigator didn't change his mind. He said that Mrs B had explained what had happened over the phone, and would have assumed that this information would've been taken into account in her online submission, but it wasn't. Our investigator thought that Mrs B should have been allowed to raise a chargeback on the phone, rather than being directed to the online portal.

NewDay again disagreed. It said that it had offered to raise the dispute for Mrs B, over the phone, on a call on 3 October 2020. But a declaration form would have to be posted to her, and the account would not be credited until the form was returned. And NewDay said it had said the same thing again later to Mrs B, that she could raise the dispute over the phone but wouldn't get the money back as quickly. So NewDay thought she'd chosen to make her chargeback claim online, because this was faster.

Because no agreement was reached, this case was passed to me for a final decision.

My provisional decision

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

I think this was always going to be a difficult issue to resolve for Mrs B. Mrs B has been clear that she didn't receive the goods, and I accept what she's said about this. But it's not clear how the retailer has treated this. I can see from the emails she had shared with us, that the retailer hasn't clarified whether it ever sent her any goods, or whether it had taken funds from her bank. It has at different points both claimed that it never took this money, and that she's going to get the money back.

Because of that, I don't think it was clear to Mrs B what sort of chargeback she should raise.

A chargeback has to fit within the rules set by the card scheme operator (whose symbol is on Mrs B's card). But I wouldn't expect a card account customer, finding themselves in this particularly complex and unclear position, to be able to decide without support from their bank, what sort of chargeback should be raised.

I've listened to the call that Mrs B had with NewDay, when it advised her to raise her chargeback online. And I do consider that Mrs B was given a strong steer to raise this chargeback herself, online. She was repeatedly advised to do so, because she

would receive a refund quicker. But what she was paid wasn't a refund, it was a temporary credit, which was then removed by NewDay when the chargeback failed.

I think that Mrs B had explained in some detail to NewDay just how complex this case was. I don't think she should have been advised to raise this particular chargeback online, because NewDay has told us that this is an entirely automated process, and there would be no opportunity for it to give Mrs B any support or assistance with her chargeback.

Instead, I think that Mrs B's chargeback should have been taken over the phone. She should have been told that, while this would unfortunately take longer, that would still be better for her, in this case, because it was complicated, and if she raised her concerns over the phone, NewDay could help with that.

So I think that NewDay gave Mrs B poor advice, and because of this, she lost out on her opportunity to recover her money. I think that if her chargeback had been processed with adequate support from NewDay, then it would have been likely to be successful. So I think that NewDay should pay Mrs B £85.97, which she hasn't recovered through her chargeback, and which I think she had a good chance of recovering if she had been given support.

Mrs B has also been caused a considerable amount of frustration and inconvenience throughout this process. I think that NewDay should pay Mrs B £100, to make up for that.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both parties replied.

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.

Mrs B said she was happy to proceed on the basis I'd set out.

But NewDay wasn't happy. It said that as part of the disputes process, customers are required to provide evidence supporting a claim. Although NewDay appreciated that the incorrect category was chosen by Mrs B, NewDay said it wouldn't have gone ahead anyway, due to the lack of evidence.

NewDay said it understood that its agent may have used the incorrect words; but he had also fully advised Mrs B to ensure that evidence supporting her claim was attached. And NewDay said Mrs B didn't complete this.

NewDay also said that given Mrs B's urgency, its agents advised her correctly about the quickest way to have her account credited. NewDay said Mrs B hadn't asked what category she should use for her chargeback, and she hadn't got back in touch to ask for help. NewDay said Mrs B could have got back in touch, and told NewDay that she wanted to raise her claim over the phone rather than online. NewDay said Mrs B had chosen not to do this, because of the longer timeline involved.

NewDay said, because of this, it felt asking it to pay the disputed amount of £85.97 and compensation of £100 was disproportionate. It said that was because Mrs B had the opportunity to contact NewDay for assistance, and didn't do so.

I said in my provisional decision, that I felt Mrs B was given a very strong steer on the call I've listened to, that she should register her complaint online. I've listened to this call again, and I still think that. I also note that Mrs B was told that doing this would mean "...*the money's back on the account within three days*". But, as I set out in my provisional decision, Mrs B wasn't given a refund. She was given a temporary credit which was then taken back when her chargeback failed. It doesn't appear to me that the chargeback process was properly explained to Mrs B on this call. So Mrs B was both encouraged to make her claim online, and not given enough information to make an informed choice about that.

NewDay has also said Mrs B's complaint would always have failed, for lack of evidence. Although NewDay has previously said that Mrs B didn't provide evidence that the retailer had promised her a refund, NewDay now seems to be suggesting that Mrs B didn't provide any evidence at all.

As we know, the only written evidence available to Mrs B in this case was confusing and unclear. Mrs B had never received the goods, and, over an extended period of time, the retailer has told her both that it had never taken a payment from her, and that it had already paid this refund. So it's perhaps not surprising if Mrs B has struggled to set out what has happened.

NewDay also said Mrs B should have raised this chargeback claim as "*goods not received*". I think that's right. But I still also think that Mrs B should have been supported to raise her chargeback in this way. I also think it's worth noting that the evidence NewDay has shown us, makes me think that Mrs B had been asking for help with this transaction for some time, and not getting it.

If NewDay had supported Mrs B with her chargeback claim, and advised her to raise this as "*goods not received*" then I think it's likely that this would have pointed her towards different evidence, which Mrs B may well have been able to provide.

So I still think that things went wrong here when Mrs B was given such a strong steer to raise this chargeback claim online, rather than being supported through the process by an agent. For that reason, I haven't changed my mind. I'll now make the decision I originally proposed.

My final decision

My final decision is that NewDay Ltd must refund onto Mrs B's card the sum of £85.97, and pay her £100 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 25 November 2021

Esther Absalom-Gough

Ombudsman