

The complaint

Miss D is complaining NewDay Ltd didn't refund an amount she paid on her credit card for a holiday after the travel provider went into liquidation.

What happened

In July 2019 Miss D bought a holiday through a travel provider – who I shall refer to as T. The holiday cost £1,906. She paid a deposit of £6 and then paid the remaining £1,900 on her NewDay credit card. In September 2019 T went into liquidation – seven days before Miss D was supposed to travel – so her holiday was cancelled.

Miss D called NewDay and ask it to freeze interest on the card, but she says NewDay told her it couldn't do so and told her to contact ATOL to get a refund. Miss D says she tried to raise a complaint with NewDay a number of times over the next two months, but she says she wasn't able to do so.

In February 2020 Miss D called NewDay and she says it told her it would refund the interest if ATOL refunded the transaction directly to her credit card. Miss D says she told NewDay that she thought this was unfair because she explained ATOL wouldn't refund the money directly onto her credit card.

ATOL later refunded the cost of the holiday to Miss D and she put this towards the balance on her credit card. She asked NewDay to refund the interest, but it said it wasn't required to do so because the refund wasn't received from ATOL directly.

Our investigator upheld the complaint. He thought NewDay should have considered Miss D's initial request for assistance under Section 75 of the Consumer Credit Act 1974 (S75). He said there's no dispute that Miss D wasn't able to travel because T went into liquidation. She didn't get the service she paid for, so the investigator was satisfied there was a breach of contract. He thinks NewDay should have refunded the cost of the holiday when Miss D first asked for assistance. And he said, had NewDay done so, she wouldn't have had to pay interest on the transaction from then. So he thought NewDay should refund the interest charged on the transaction in question from 23 September 2019 – the date T went into liquidation.

NewDay didn't agree with the investigator and maintained it didn't have to refund the interest because ATOL refunded the cost of the holiday. And it asked for an ombudsman to review the complaint.

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.

I've decided to uphold this complaint and I'll now explain why.

Miss D contacted NewDay for assistance both through NewDay's online webchat and on the telephone. Due to the passage of time, NewDay doesn't have a copy of the correspondence it had with Miss D at the time. But I've found her recollection of what was said to be consistent and persuasive.

I understand Miss D contacted NewDay four times in the three weeks after T went into liquidation looking for assistance. It seems NewDay instructed her to contact ATOL, but I don't think this was fair. As it's not disputed T breached the terms of the contract, NewDay, as the credit card provider, had a responsibility to put things right owing to its responsibilities under S75.

I accept it's likely Miss D didn't specifically ask for assistance under S75. But NewDay should have also understood Miss D wouldn't necessarily have understood what her rights were. And it should have understood she was looking for it to provide her with assistance in the difficult time she, like many others, was facing following T's liquidation. I don't think it was fair to automatically direct her back to ATOL and it should have explained her rights under S75 as well.

Miss D paid for the holiday on her NewDay credit card. S75 sets out that, in certain circumstances, as the finance provider, NewDay is jointly liable for any breach of contract or misrepresentation by T. I'm satisfied those circumstances apply here.

The terms of Miss D's contract with T entitled T to cancel the holiday. But they also said that, if T did so, it needed to do the following:

"If we [T] have to cancel your Holiday we'll tell you as soon as reasonably possible. If we can do so, we'll offer you an alternative Holiday of equivalent or closely similar standard and price at no extra cost to you, or a Holiday of lesser quality or cost, in which case we'll refund the difference in price. If you don't wish to take the alternative we offer you, you can choose another one of our Holidays and pay, or receive a full refund of, any price difference. Alternatively, if we can't offer an alternative Holiday that you're happy to accept, you can have a full refund of any money you've paid to us, except for any amendment charges which arose before cancellation."

So, upon the cancellation of the holiday, T was contractually required to either provide Miss D with an alternative holiday or provide a full refund of what Miss D paid for it. Miss D didn't receive either. So I'm satisfied T breached the terms of its contract.

Miss D didn't have to resolve the matter directly with T or through an alternative dispute authority to be eligible to claim under S75. And NewDay should have understood this and advised Miss D of her rights as this was likely to be the quickest way of ensuring she didn't continue to pay interest on the transaction. Had it considered this request under S75, NewDay would have refunded the amount Miss D paid for the holiday. And I think she would have received this sooner than she did with ATOL. So I think Miss D has lost out.

But, even if what I've said above wasn't the case, I should also highlight NewDay is liable for all recoverable losses under S75 – and this includes consequential losses arising from a breach of contract. Further to this, the terms of Miss D's contract with T sets out that T will

compensate Miss D for consequential losses arising from a breach of contract (up to three times the cost of the holiday). As I said above, T breached Miss D's contract by failing to provide an alternative flight or to provide a full refund.

After Miss D received a refund from ATOL, she asked NewDay to refund the interest she paid. NewDay said it wasn't required to pay this because ATOL refunded the money to Miss D directly. But I don't agree, as it should have considered its responsibilities under S75.

Had T issued a refund, as it was contractually required to do, Miss D wouldn't have been charged interest on the transaction going forward. So I think the interest she paid since T went into administration is a direct loss arising from T's breach of contract. I also think it's reasonably foreseeable that a consumer will incur financial losses (e.g. interest charges) if a refund isn't provided or is delayed. Finally, I think Miss D has taken reasonable steps to mitigate her losses by asking NewDay to freeze her interest charges and also in applying for a refund from ATOL when she was unsuccessful in getting assistance from NewDay. As I think the interest she has paid is a loss Miss D could have recovered from T, it follows that I think NewDay is liable for this loss.

Taking everything into consideration, I think the fairest way to resolve this complaint is that NewDay should reconstruct Miss D's credit card as if she'd received a full refund of the cost of the holiday from the day T went into liquidation – 23 September 2019 – and this was paid towards her credit card balance. If, after doing so, it finds out Miss D was out of pocket, it should pay 8% simple interest on this from the date she was first out of pocket until she gets it back.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint. I require NewDay Ltd to reconstruct Miss D's credit card as if she'd paid £1,900 onto her credit card on 23 September 2019 – the day T went into liquidation. If, after doing so, it finds out Miss D was out of pocket, it should pay 8% simple interest on this amount from the date she was first out of pocket until she gets it back. If NewDay thinks that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss D how much it's taken off. It should also give her a tax deduction certificate if asks for one, so she can reclaim the tax if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 25 February 2022.

Guy Mitchell

Ombudsman