

The complaint

Mrs P is complaining about the way NewDay Ltd handled a chargeback claim she made regarding a transaction on her credit card.

What happened

Mrs P bought a holiday wedding package for her daughter and daughter's fiancé which was provided by a travel company who I shall call F. The holiday package was arranged through a broker who I shall refer to as W. They were due to travel in May 2021.

In September 2019, F went into administration and the wedding package Mrs P had bought was cancelled. Mrs P then contacted NewDay and asked it to process a chargeback to recover the money she'd spent. NewDay sent a declaration for her to fill out and asked her to provide information it required to process the chargeback. Mrs P returned this information in October 2019, following which NewDay processed the chargeback. However, the supplier defended the claim as it didn't believe Mrs P had provided enough information.

NewDay considered representing the claim but decided to not do so because Mrs P didn't book directly with F, so it thought the chargeback would fail. Mrs P didn't agree this was fair and referred her complaint to this service to review.

Our investigator upheld the complaint but he didn't think it was fair for NewDay to not process the chargeback the second time. He didn't think NewDay had correctly interpreted the chargeback rules in this case. And he said guidance had been issued to say that the card scheme provider (M) said they view an online travel agent (OTA) as the merchant of record, regardless of the terms and conditions disclosed to the cardholder. And, he said M explained that a chargeback right exists as the OTA are the agent of the supplier and so can't say they are only responsible for the making the reservation – as by accepting payment for the service purchased, they assume responsibility for a chargeback if the service is not provided.

So the investigator didn't think it was a viable defence to the chargeback claim that the booking had been made through an agent – i.e. W.

NewDay didn't agree with the investigator. It also said the chargeback rules required Mrs P to evidence she'd either claimed for her loss from the Association of British Travel Agents (ABTA) and had her claim declined, or she'd provided evidence ABTA wouldn't have covered the loss had she claimed. And it didn't think she'd provided this.

Our investigator didn't agree with NewDay. He said ABTA had said that people who paid by credit or debit card needed to claim through their card provider. He also noted NewDay's own investigation set out that Mrs P wasn't ABTA protected.

NewDay maintained that Mrs P hadn't provided enough information that she couldn't claim through ABTA. It said she should have contacted ABTA and would have been told she wasn't protected and this would have been sufficient to support her claim. It maintained Mrs P was required to provide a statement from ABTA to say she wasn't protected.

As NewDay didn't agree with the investigator, 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.

Mrs P is unhappy NewDay didn't process the chargeback a second time. Chargeback is the process by which a bank or credit card provider look to resolve a settlement between a consumer and a merchant under the relevant card scheme. Initially the card provider will temporarily refund the payment back onto the card account and will raise a dispute with the merchant. The merchant is then required to respond within a prescribed period of time with any further information it wishes to provide and set out why it thinks the chargeback shouldn't go through. If the chargeback is defended, then the temporary refund is returned to the merchant.

In this case, the merchant defended the chargeback because it didn't think Mrs P had provided enough information to support the claim – although NewDay hasn't provided a copy of the merchant's reply. NewDay considered processing the chargeback again, but decided to not do so because the payment was done through a third party. And it thought this meant Mrs P wasn't eligible for a chargeback. But I think this was an incorrect interpretation of the rules.

In May 2020 M issued some guidance on how the rules should be applied in situations such as Mrs P's. And it said the following:

"[M] would view the online travel agent (OTA) as the merchant of record, and an agent of the travel supplier, regardless of the terms and conditions disclosed to the cardholder. Under [M] Standards, the OTA, by accepting payment for the service purchased by the cardholder (e.g. flight) and not just for handling the reservation, assumes responsibility for chargebacks if the service is not provided. The OTA should work closely with its travel partners or travel suppliers to avoid a cardholder getting reimbursed twice for the same transaction."

I acknowledge this guidance was issued after the chargeback was initially processed and NewDay declined to process it further. However this wasn't a new way to interpret the rules, but just gave further clarity how the rules should be applied. And, ultimately, it says it's not a defence to a chargeback claim if the holiday package is bought through a third-party agent.

In this case, Mrs P bought the holiday package through W – an online travel agent – but the contract was with F. However, under the scheme's rules, W was responsible for the chargeback. And I think NewDay was wrong to assume W could have used this as a defence.

I also note NewDay says Mrs P wasn't eligible for the chargeback because she hadn't initially sought to claim for the loss from ABTA. However, I don't agree with this. I don't dispute the scheme's rules set out that, to be eligible for a chargeback, Mrs P needed to have tried to claim from ABTA and had the claim declined or not had a response. But the rules also say this doesn't apply if the merchant or ABTA had already said the claim wouldn't succeed.

Firstly, I'm conscious NewDay had already concluded Mrs P couldn't claim for the loss from

ABTA. In particular it's internal notes set out "*the card holder has provided all the necessary documents in the repudiation response and is also not protected by ABTA.*" Further to this, I'm conscious ABTA also said Mrs P "*will need to submit [her] claim for a refund to [her] card issuer.*" I can also see this information was given to NewDay by Mrs P in her initial submissions.

So I'm satisfied that there was sufficient evidence available to show that Mrs P wouldn't have been able to claim for her loss through ABTA. So I don't think this was grounds for NewDay to not process the chargeback.

However, even if I'm wrong on this, NewDay should have explained this to Mrs P at the outset, but it didn't do so. This delay has meant she's now time-barred from being able to raise the chargeback claim further.

Ultimately, it's not disputed Mrs P didn't get the service she was entitled to under her contract with F. Had NewDay strongly pursued the chargeback, on balance, I think it's likely it would have succeeded. So I think Mrs P has lost out as a result of NewDay's unfair decision to not process the chargeback. Given this, I think NewDay should refund the £1,200 Mrs P paid. I think it should also pay 8% simple interest on this amount from 16 March 2020 (the date it unfairly decided to not process the chargeback) until she gets it back.

I think Mrs P has suffered some unnecessary distress and inconvenience as a result of NewDay's handling of her chargeback claim. The investigator awarded £100 in compensation for this and I think this is fair.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and I require NewDay Ltd to do the following:

1. Pay Mrs P £1,200 – the amount she claimed through chargeback;
2. Pay 8% simple interest on this amount from 16 March 2020 (the date it unfairly decided to not process the chargeback) until she gets it back*; and
3. Pay Mrs P £100 in compensation for the distress and inconvenience this matter has caused her.

If NewDay thinks that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs P how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 17 January 2022.

Guy Mitchell

Ombudsman