

The complaint

Mr M complains that NewDay Ltd should have refunded the cost of a faulty phone he bought using a credit card they provided.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead I'll focus on giving my reasons for my 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.

I know it will disappoint NewDay but I agree with the investigator's view of this complaint. Please let me explain.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made, in part or whole, with a credit card, as is the case here, it might be possible to recover the money paid through a chargeback claim.

The chargeback scheme is intended to help resolve disputes between the consumer and the merchant without the need to resort to court action.

The scheme, in this case, is operated not by NewDay but by Mastercard and the scheme operator sets strict rules under which claims can be made.

NewDay processed a chargeback but it was rejected because the merchant said *"the buyer has made no attempt to return the goods to the merchandiser"*.

But that was wrong. Mr M had tried to return the goods and the seller had sent them back to him. Any repair they may have done hadn't been successful. The situation just prior to Mr M raising the issue with NewDay appears to have been that the seller was now refusing to refund the goods as Mr M had been in possession of them for too long before requesting a refund.

The relevant legislation says that, in these circumstances, if goods are faulty when supplied the supplier should be given an opportunity to repair them but if the repair is unsuccessful the relevant legislation would support the rejection of the goods.

I'm persuaded the goods were likely to be faulty when supplied because I accept it's likely Mr M had bought the phone as a Christmas present for his daughter. I can see his initial complaint to the merchandiser was made only a few days after Christmas. I don't think it's likely Mr M would have tested all the functionality of the phone before Christmas, that would have been done once his daughter opened her present, and I'm persuaded the phone was therefore likely to have been faulty when supplied.

I've reviewed the messages Mr M exchanged with the merchandiser and I can see they attempted to repair the phone and that they sent it back to him. Mr M subsequently emailed the merchandiser to explain the phone still wasn't working and at that point the relevant legislation would support rejection and a refund.

I think it should therefore have been abundantly clear to NewDay that Mr M had a valid chargeback complaint. The phone wasn't of satisfactory quality and he had attempted to return it, but the supplier wouldn't accept it and return Mr M's money.

In those circumstances I think they should have taken Mr M's claim to chargeback arbitration as they would have been likely to succeed.

So, I don't think NewDay have been reasonable.

And, even if I'm wrong about that, when something goes wrong and the payment was made, in part or whole, with a credit card, as is the case here, it might be possible to recover the money paid through a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

I think NewDay should have considered a section 75 claim even if the chargeback scheme provider rejected Mr M's chargeback claim.

Had they done so I think they would have been likely to conclude there had been a breach of contract here as Mr M's phone was not supplied in satisfactory condition and an attempt to repair it had failed.

In those circumstances I think they should and would have provided a refund.

Putting things right

NewDay should refund the cost of the phone and they should add 8% simple interest per year from the date they declined the chargeback request until the date of settlement.

Mr M referred his complaint to NewDay in mid-January 2021 and referred his complaint to this service in April 2021. He had to chase NewDay for action and I think he could have expected NewDay to have taken his chargeback to arbitration and to have considered a section 75 claim. In those circumstances I would agree with the investigator that they should provide a further £150 in compensation for the distress and inconvenience their actions whilst processing Mr M's claim have caused him.

NewDay should

My final decision

For the reasons I've given above I uphold this complaint and tell NewDay Ltd to:

- Refund the cost of the phone and add 8% simple interest per year from the date they declined the chargeback request until the date of settlement.
- Pay Mr M a further £150 in compensation for the distress and inconvenience caused whilst processing the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 December 2021.

Phillip McMahon
Ombudsman