

## **The complaint**

Mr I complains NewDay Ltd won't refund a payment made on his credit card to a secondary ticket selling website ("the Website") for event tickets.

## **What happened**

In February 2018, Mr I bought five tickets for an event in April 2018 on his NewDay credit card. In total, he paid £467.06.

Mr I says the Website misrepresented the ticket price to him – he says they failed to inform him of the face value of the tickets and only realised upon receiving them that he'd paid a lot more than the face value. Mr I also says he feels the Website misled him into buying the tickets as there were messages on the Website alerting him that there were only a certain amount of tickets available. But Mr I says this was untrue.

Mr I feels the Website failed to inform him of the seat location at the time and also didn't provide him with information about any restrictions relating to leg room. Mr I says he didn't attend the event as the seat location of the tickets were unsuitable for his relative who was due to attend, due to their medical condition.

NewDay looked into Mr I's concerns. They thought a claim under Section 75 of the Consumer Credit Act 1974 (CCA) should be unsuccessful. They said the Website had displayed the full cost of the tickets before Mr I agreed to the purchase. NewDay also told us they didn't have grounds to raise a chargeback claim because they didn't feel they had a reasonable prospect of success. NewDay acknowledged Mr I was given wrong information when they told him a credit card can only be used for a Section 75 claim. NewDay apologised for this error and applied a credit of £15 to Mr I's account in recognition of the inconvenience caused.

Unhappy with NewDay's response, Mr I brought his complaint to our service. Our investigator looked into things for him. Ultimately, he didn't think NewDay had acted unfairly by declining Mr I's request for a refund. He said Mr I had entered his card details on the Website when purchasing the tickets, therefore, he'd authorised the transaction. Our investigator also thought the full price was shown by the time Mr I completed the transaction.

So, he didn't think there had been a misrepresentation or breach of contract by the Website. Overall, our investigator didn't think NewDay needed to do anything else.

Mr I disagreed. In summary, he reiterated he was misled by the Website as he wasn't informed of the face value of the tickets and also because the Website didn't let him know the location of the seats had limited legroom – which Mr I has said was unsuitable for his family member. Mr I said he felt the Website had acted unfairly in making him believe the tickets were quickly selling out even though there was a number of tickets still available. So, the complaint has been passed to me.

I issued my provisional decision on the matter, setting out the below:

*This complaint is about NewDay, as Mr I's credit card account provider. It's not about the Website, which isn't a financial service provider and so doesn't fall within my remit. I'm only considering whether Mr I authorised NewDay to debit his account with the value of the payment, and whether they should have helped with the dispute with the Website in any other way.*

*Mr I doesn't argue he didn't buy the tickets on his credit card, he argues that he didn't pay the face value amount for the tickets. He said he believed the price of the tickets to be around £66 each, but then realised the total amount was £467.06 once he received the tickets. Mr I says there were messages alerting him that there were only a certain amount of tickets left so he felt rushed to complete the purchase process. While I appreciate what Mr I has said, he would have had to enter his card details on to the Website and he would have needed to place the order, to be able to obtain the tickets. Having carefully thought about this, I think Mr I consented to and authorised the transaction.*

*Mr I says he wasn't aware the total price of the tickets would be over £400 and says he only became aware of this once he'd received the tickets. We've got screenshot evidence of the ticket buying process dating back to October 2017 - where the 'total price' is displayed on the final page before the buyer is asked to enter their card details. I can see this section also includes any additional charges. This information would have likely been available to Mr I before he entered his card details and proceeded to buy the tickets. Having considered everything Mr I has said (including that he made this purchase and paid for the tickets) and the evidence provided by NewDay, I'm satisfied the transaction was properly authorised and correctly applied to Mr I's account with NewDay.*

*could NewDay challenge the transaction through a chargeback?*

*In certain circumstances, when a cardholder has a dispute with a merchant (as Mr I does here), the card issuer (NewDay) can attempt a chargeback. Generally, we say it's fair for a card issuer to attempt a chargeback - or to challenge a payment - if there's a reasonable prospect of success, for example where goods or services aren't received, or it appears that the payment wasn't properly authorised by the cardholder.*

*Indeed, we're aware of cases, with some similar features to this one, where a chargeback has been successful. But I don't think NewDay could have challenged the payment on the basis Mr I didn't properly authorise the transaction, given the conclusions I've already set out.*

*Mr I has been consistent in telling us the seat location wasn't suitable for his family member who was due to attend the event because of their health condition. I appreciate what Mr I has told us about this, but I don't think NewDay could have challenged the payment on the basis that Mr I didn't get what he ordered. This is because Mr I chose the tickets he bought. I also haven't seen anything to suggest Mr I was told anything untrue about the tickets and their location. So, I don't think NewDay could have reasonably challenged the payment on the basis the tickets didn't match their description.*

*I note Mr I says he was overcharged for the tickets because he didn't pay face value for them. But I don't think there's a reason code NewDay could have used under the chargeback scheme rules to get Mr I's money back on the basis that he was being charged more than a ticket's face value. As I've explained, Mr I authorised the transaction and agreed to pay for the tickets. NewDay are required to consider whether there is a reasonable prospect of success when they are considering whether to go through the chargeback process or not. Bearing in mind Mr I authorised the transaction and received the tickets, NewDay's decision that there wasn't a reasonable prospect of success in a chargeback is fair and reasonable in my opinion. So, I'm not currently persuaded they acted unfairly.*

*NewDay say they credited Mr I's account with £15 in recognition of the inconvenience caused when they incorrect informed Mr I that his credit card could only be used for Section 75 claims. And I think this is fair compensation in the circumstances of this complaint. In any case, I don't think this incorrect information had a material impact on NewDay's consideration of Mr I's chargeback claim.*

*how about Section 75 of the Consumer Credit Act 1974?*

*As the payment was made using a credit card, I have also taken into account how Section 75 applies to the transaction. In certain circumstances, Mr I has an equal right to claim against NewDay as he does against the supplier (the Website) if there's been a breach of contract or misrepresentation by the supplier if certain conditions are met.*

*My role isn't to decide NewDay's liability under Section 75. Instead, as statute requires me to, I need to decide what's fair and reasonable, taking into account any relevant law, such as the Consumer Credit Act 1974. For a valid claim under Section 75 there must be a debtor-creditor-supplier arrangement in place. The Website's terms and conditions in this case say: "1.2 Ticketing Exchange. [Website's name] provides a service that allows members who want to buy tickets ("Buyers") to find members who want to sell tickets ("Sellers"). [Website's name] does not take title to the underlying ticket and the actual transactions are between the Buyers and Sellers."*

*This satisfies me that the tickets aren't supplied by the Website. But that the Website does provide a service. And for this they charge buyers a fee. In regard to the fee, the Website says they:*

*"...charge a service fee on top of the ticket price. This fee is displayed in the check-out process and covers the cost of maintaining the [Website's name] platform, guaranteeing tickets and providing customer service."*

*In effect then, there is a debtor-creditor-supplier arrangement between Mr I, NewDay and the Website, albeit not for the direct provision of the tickets themselves. Instead, the Website provides a service. The service consists of two main things - the platform and the guarantee. So, I think the Website is responsible for how ticket information (such as venue, date, time, and the asking price) is displayed to buyers. And I think, under the guarantee, they're responsible for providing replacement tickets or a refund if the seller doesn't fulfil their obligations around supplying the tickets.*

*Another condition necessary, for a valid claim under Section 75 is that the service provided by the Website must have a cash price of more than £100 but less than £30,000. In Mr I's case, I've seen the breakdown of the amount the Website charged him and can see he paid a total of £467.06. Looking at the order confirmation provided by the Website, the total ticket cost came to £340.40. The Website then charged booking (£98.88) and shipping fees (£18.01) and the remainder was VAT (£19.77). This comes to £136.66. So, I'm satisfied that the Website's fees for their services in this case was more than £100 but less than £30,000. This means I think Mr I could have a valid claim under Section 75.*

*So, I've established that the necessary arrangements exist for a claim under Section 75 about the service the Website provided, and that the cash price of that service is sufficient for Section 75 to apply. Next, I need to consider whether there's been a breach of contract or misrepresentation on the part of the Website.*

*Mr I has complained he didn't pay face value for the tickets. I appreciate Mr I's concerns; however, I'm not persuaded there is a misrepresentation here. I say this because Mr I knew*

*the price he was paying for the tickets and went through the purchase process to get them. I'm not persuaded he's been told anything untrue which materially persuaded him to buy the tickets he otherwise wouldn't have. Additionally, Mr I received the tickets, but chose not to attend the event. So, I'm not persuaded there has been a breach of contract either. In any case, it's the seller which sets the price of the tickets, not the Website. This means the difference between the face value of each ticket, and what Mr I paid for each ticket, went to the seller, not the Website.*

*Mr I says the seat location of the tickets wasn't suitable for his family member due to their health condition. And from what Mr I has told us, it seems he was told the seats were in the "Grand Tier". So, even though Mr I may not have been given all of the information about the seats to be able to make an informed decision about the suitability of the tickets, I don't think Mr I was necessarily told anything that was untrue. I've not seen any evidence which shows Mr I didn't get the tickets that he paid for or in the section he selected at the time. And I'm not persuaded there's any evidence to suggest Mr I was provided with false or untrue information about the seat location. With all of this in mind, I don't think the tickets have been misrepresented to Mr I. Nor do I think there's been a breach of contract.*

*was there anything else within the Consumer Credit Act 1974 that NewDay should have considered?*

*Even though I've made the finding that I don't think there is a valid claim under Section 75, I think Section 56 of the CCA could be of particular relevance to this complaint.*

*In summary, Section 56 has the effect of making the Website the agent of NewDay during the "antecedent negotiations" leading up to Mr I entering into a transaction with them. So, essentially, this means NewDay are responsible for the acts or omissions of the Website and what was said or done before the transaction was entered in to and conducted by the Website, in other words, NewDay have to stand behind the things the Website said, did, didn't say, or didn't do during the sales process.*

*For a valid claim under Section 56, there has to be a valid debtor-creditor-supplier arrangement in place - which is satisfied for reasons I've already explained. However, unlike Section 75, there are no monetary limits attached to Section 56. So, I can consider the impact of Section 56 and whether NewDay ought to have considered this in Mr I's case.*

*With this in mind, I've thought about whether the Website misrepresented the information, or the tickets Mr I purchased. As previously explained, I've seen screenshot evidence of the buying process from 2017 - which I think is more likely than not, the same steps Mr I followed when he purchased the tickets. And I can see the total price is displayed on the final page before Mr I would have been asked to enter his card details. So, I think it's more likely than not Mr I would have been made aware of the total cost of the tickets. Having thought about this carefully, I'm not persuaded the Website misrepresented the price to Mr I.*

*I note Mr I has also said the location of the seats weren't suitable for his family member and that he wasn't given information by the Website about the location restrictions. But as previously explained, I don't think the information Mr I was given about the location of the seats was misrepresented to him.*

*In summary, while I appreciate this will likely come as a disappointment to Mr I, I think he authorised NewDay to debit his credit card account with the value of the transaction to the Website, so I think it was fair for them to do that. I also don't think NewDay acted unfairly in the handling of Mr I's chargeback or Section 75 claim. Had NewDay considered Mr I's claim under Section 56, I don't think they would've acted unfairly by declining it. NewDay acknowledged they gave Mr I the wrong information and credited his account with £15*

*compensation for the inconvenience caused. And as I've explained, I think this is fair compensation in the circumstances. So, I currently don't think I can ask NewDay to refund Mr I for the tickets or that they need to do anything more.*

NewDay accepted my findings, but Mr I didn't. In summary, he said he was disappointed with my decision and that the Website are in breach of the Competition and Marketing Authority regulations by not informing him of the face value of the tickets and also not providing information about the seat location.

### **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'm sorry to learn of Mr I's disappointment to my provisional decision and its findings.

Mr I has raised some concerns about the Website being in breach of Competition and Marketing Authority regulations. I can appreciate these concerns, however, as explained in my provisional decision, I'm unable to look at the actions of the Website and can only look at those of NewDay. NewDay's role in the matter is to be considered under the Chargeback rules in place, S75 of the Act and what is fair and reasonable with regard to those. So, although Mr I feels the Website has failings and points to regulation, it does not follow that NewDay are responsible because of this. The question of whether or not NewDay have treated Mr I fairly is the only question I can decide upon in this decision. This is a different test to whether or not Mr I feels the Website's sales process was fair.

NewDay can only be responsible here if there is either a breach of contract or misrepresentation which materially impacted Mr I's decision to purchase the tickets. And as explained in my provisional decision, while Mr I may not have been given all of the information about the seats to be able to make an informed decision, I don't think he was necessarily told anything untrue. So, it follows, I don't think there has been a breach of contract here.

Equally, in relation to the face value of the tickets, Mr I knew the price he was paying for the tickets at the time and purchased them. I'm not persuaded he was told anything untrue which materially persuaded him to buy the tickets he otherwise wouldn't have. So, my opinion remains that I don't think there's been a breach of contract or misrepresentation.

I understand Mr I's frustration about the outcome I've reached, but as I've explained here and in my provisional decision, I don't think NewDay have acted unfairly.

### **My final decision**

For reasons explained above, I don't uphold this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 11 January 2022.

Leanne McEvoy  
**Ombudsman**