

The complaint

Mr S complains that NewDay Ltd won't refund money he lost as part of a scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat everything in detail again here. In summary, in February 2019, Mr S decided to get involved in financial trading with a company I'll call 'E'. He paid a deposit of \$250 which was reflected on his trading account but after carrying out further research saw that it was a scam. He made a withdrawal request but this wasn't responded to and he was subsequently blocked from accessing his trading account.

Mr S contacted NewDay to help recover his money, he also reported the matter to the police. NewDay explained it didn't have any dispute rights under the Mastercard chargeback scheme, nor did he have a valid s.75 Consumer Credit Act 1974 claim. But it recognised its fraud and disputes team gave him incorrect information and paid £35 to his credit card account by way of an apology.

Unhappy with NewDay's response, Mr S referred his complaint to this office. One of our investigators reviewed the complaint and felt that Mr S had valid chargeback and s.75 claims. He suggested that NewDay refunds the disputed payment. NewDay didn't agree. Another one of our investigators reviewed the complaint and issued a second opinion. In her view, Mr S didn't have valid chargeback rights because Mastercard didn't have dispute options covering the nature of Mr S' claim. She also felt s.75 didn't apply because the required debtor-creditor-supplier chain was broken as Mr S didn't pay E directly.

Mr S didn't agree, he maintained a chargeback claim should have been raised.

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.

The nature of Mr S' complaint is that he fell victim to a scam and wasn't permitted to withdraw his deposit when he became aware of this.

E is regulated in Cyprus and is still in operation today. I recognise that the FCA removed its passporting rights in June 2020 but this was some time after Mr S' payment, so I can't agree it was a scam company.

That's not to say that there weren't misrepresentations or a breach of contract, which is where s.75 becomes relevant. But s.75 appears to fail at the first hurdle because for Mr S to establish a valid claim, there must be an unbroken debtor (Mr S) – creditor (NewDay) – supplier (E) chain. But here, Mr S didn't pay E directly, he instead paid a company called G. Mr S hasn't provided any evidence that he had a contract with G that was misrepresented or breached, so I agree with our investigator that s.75 does not apply in this case.

Whilst Mr S believes he was scammed, the chargeback scheme rules don't automatically entitle him to a refund based on these circumstances. The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. From the information I've seen, the scheme operator relevant to Mr S' credit card payment is Mastercard.

Mastercard significantly limits any chargeback dispute claims that relate to investments or gambling. The only dispute right would be if E didn't fund Mr S' trading account at the time he deposited his money. But Mr S confirmed to our investigator that his trading account was credited (even if he believes this was fake) and he tried to make a withdrawal but was unable to do so. Because of this, there wouldn't have been a valid dispute right available to him. Mastercard also doesn't offer chargeback dispute rights for scam claims as a standalone issue.

I've taken into account the law, regulatory rules and guidance, relevant codes of practice, and what I consider to have been good industry practice at the time. NewDay ought to have been monitoring accounts to counter various risks, have systems in place to identify unusual transactions, or other indicators, that its customers were at risk of fraud and, in some situations, make additional checks before processing payments, or declined them altogether, to protect its customer from possible financial harm from fraud.

I don't think there was a reason for NewDay to have challenged the disputed payment. There was no regulator warning about G at the time this was authorised by Mr S. And given the individual amount involved, I don't consider the payment as particularly unusual or suspicious such that they ought to have triggered NewDay's fraud detection systems. Afterall, it must balance the extent to which it intervenes in payments to try and prevent fraud against the risk of unnecessarily inconveniencing or delaying legitimate transactions.

In summary, I don't think NewDay ought to have prevented this authorised payment from being sent, and I don't think there was a viable route for it to raise a chargeback claim nor do I think there was a valid s.75 route to pursue.

I realise that this will come as a considerable disappointment to Mr S. Not least because the matter has been ongoing for some time and our investigator initially upheld the complaint. But I can only fairly make an award if I think that NewDay's errors caused, or contributed to, his loss. In this case, I think that Mr S' concerns about E are best placed to be directed to E as a formal complaint (if Mr S has not already done this). He may also wish to contact the Financial Ombudsman in Cyprus in case they may be of some assistance.

My final decision

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 April 2022.

Dolores Njemanze
Ombudsman