

The complaint

Ms H complains that NewDay Ltd didn't provide a refund when goods that she paid for using her NewDay credit card went missing after delivery.

What happened

In September 2021 Ms H made an online purchase via a third party that cost about £34. A courier left the goods on her doorstep but Ms H didn't hear a knock and, by the time she realised the goods were delivered, they'd been stolen. The courier says parcels will be photographed in an open doorway as proof of delivery - but the photo supplied shows her parcel by a closed door.

Ms H considers the courier breached its own delivery policy and she didn't receive her goods as a result. She got in touch with NewDay and a chargeback was raised but this was unsuccessful. Ms H thinks it's unfair that she has to pay for goods she didn't receive and she complained to NewDay about this and poor customer service.

NewDay wrote to Ms H on 4 November 2021. In summary, it said the chargeback failed because the seller was able to show the goods had been delivered and Ms H remained liable for the payment. NewDay accepted Ms H might have been let down in terms of its customer service. It credited her account with £15, by way of apology and told Ms H she could refer the matter to our service.

One of our investigators looked at the evidence. She wasn't persuaded that NewDay should have done more to pursue the chargeback. And she didn't think section 75 of the Consumer Credit Act 1974 applied because the price of the goods was below the lower limit required by this section. She was satisfied that NewDay dealt with Ms H's complaint fairly overall and she didn't recommend the complaint should be upheld.

Ms H disagreed and asked for an ombudsman to review the matter.

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.

Ms H brings her complaint about NewDay to our service because she bought these goods using her NewDay credit card. And I should make it clear at the outset that I'm looking at NewDay's obligations arising out of that credit agreement here. It's not within my remit to look into things done – or not done – by third parties, such as the courier.

Chargeback

Ms H contacted NewDay because the goods she ordered and paid for went missing and she wanted her money back. The chargeback process allows a customer to ask for a transaction to be reversed if there's an issue with goods or services they paid for using a credit or debit card. But, the success or failure of a chargeback is decided under the relevant card scheme

rules – that's Mastercard in this case. There's no automatic right to a chargeback.

We generally think a financial business should attempt a chargeback if there's a reasonable chance of success. It's for the financial business to decide if a chargeback is likely to succeed however - albeit we would expect the business to make that assessment on a reasonable basis.

I'm satisfied that NewDay did raise a chargeback in relation to the relevant transaction here - but the seller was able to challenge this successfully under the scheme rules. I've seen nothing to suggest that NewDay didn't deal with the chargeback properly. I've got no reason to think that a chargeback is likely to have succeeded if it had been presented again. And I can't fairly find NewDay did something wrong in this respect.

Section 75

I'm obliged to take relevant law into account when I make my decision and I've thought about section 75 when deciding if NewDay provided a fair and reasonable response to Ms H's complaint. I want to make it clear however that I'm not deciding liability under section 75 here - only a court can do that.

Broadly speaking, section 75 says a borrower may be able to bring an equal claim under an agreement with a supplier against a credit provider where there's been a breach of contract or misrepresentation. As the investigator explained, section 75 has strict financial limits and it only applies where the price of goods and/or services was more than £100. The goods Ms H bought here cost less than that. And I can't fairly find it was unreasonable that NewDay didn't provide a refund under section 75.

I can see that Ms H has strong feelings about what happened. I understand her frustration and I realise this decision is likely to come as a disappointment. But, for the reasons I've set out above, I'm satisfied that NewDay did what we'd expect in this situation. Like the investigator, I'm not persuaded that NewDay has acted unreasonably or treated Ms H unfairly. And I'm unable to uphold this complaint.

My final decision

For the reasons I've given, my decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 19 August 2022.

Claire Jackson
Ombudsman