DRN-3516573

The complaint

Mr H has complained about how Think Money Limited (TML) responded to a claim for money back in relation to a purchase he'd made on his debit card. He's also complained about ongoing service issues.

What happened

Mr H paid £27.50 to a firm for a fit to fly antigen test in October 2021 using his TML debit card. I understand Mr H quickly realised this wasn't what he wanted, so tried to cancel the order, which was unsuccessful. When the item was received Mr H said he returned it to the merchant and asked for a refund.

As he wasn't getting anywhere, later in October 2021 Mr H spoke to TML and asked it to reverse the transaction under chargeback. He also told TML he was thinking of closing his account. TML said it could take around five working days to respond. And it told Mr H he should leave the account open while the dispute is ongoing. TML raised the chargeback.

Expecting a response, Mr H spoke to TML at the end of October 2021 and was told the merchant had 45 days to respond to the chargeback. TML said if there was no response Mr H would be reimbursed the following day. TML explained it would be in touch with Mr H. Mr H reiterated he wanted to close the account and TML explained that it may be able to refund the monthly fees for the account if Mr H didn't use it.

The merchant defended the chargeback on 15 November 2021 saying Mr H returned the goods without any complaints or defects. It said Mr H had contacted it to say he'd placed the order by mistake, but the goods were as described and not defective. And it also highlighted terms in the check-out process that said *I understand that once the kits are dispatched by* [the merchant] *after I have placed an order, the sale is non refundable.*

Again, expecting a response, and after the 45-day period, Mr H spoke to TML in mid-December 2021 about the chargeback and was told it had been defended by the merchant because the goods were non-refundable. So it said it didn't have grounds to dispute this further. Mr H was unhappy with this. Mr H complained about how TML was dealing with things and was unhappy TML hadn't told him of his rights to refer the complaint to the Financial Ombudsman. The agent told Mr H he'd be contacted within a couple of days.

TML sent its final response letter to Mr H saying it was unable to pursue the chargeback further and letting him know it didn't think the service it provided earlier on in the month was unreasonable either.

Mr H wasn't happy he'd not received a call from TML to discuss the complaint so he could explain things in detail. He explained he was unhappy TML hadn't taken distance selling regulations into account when considering the chargeback. He thought TML had accepted evidence that was incorrect. He asked TML to send information it held about him. And he also asked again about the monthly fee for the account, and what would happen if he were to close the account. Mr H complained that the agent said the fees would be payable, unless an exception was agreed with another department.

Mr H brought the complaint to our service. He also complained about the service provided by TML when trying to obtain his documentation.

Our investigator looked into things but thought TML had done enough to resolve the complaint. He thought TML had handled the chargeback fairly. He said the goods weren't defective or not as described and that chargeback doesn't cover situations where the customer changes their mind. He also didn't think these types of goods were covered by the regulations for distance selling.

He also thought about the monthly account fee. He said he'd spoken to TML about it and that it had agreed to refund the fees from the time Mr H stopped using the account, whilst waiting for his complaint about the chargeback to be resolved, which he thought was fair.

Mr H didn't agree with the assessment. He said his complaint was not about getting money, it was to do with the principle. He didn't think the investigator had listened to the calls he'd had with TML. He says there were clear inconsistencies regarding the information he was given. He said no one explained his consumer rights and that his complaint hadn't been handled properly.

Our investigator said he'd listened to the calls between Mr H and TML that covered the raising of the chargeback; discussion of fees for the account; the reason for the chargeback being declined; and the raising of a complaint. He said he'd not heard anything that would have changed the decision of the chargeback. And he said he acknowledged Mr H felt there were inconsistencies in the information provided by TML, but that he'd tried to clarify things in his assessment.

Mr H responded to say he understood the investigator's explanation regarding his consumer rights and the chargeback, but he didn't accept why TML didn't inform him of this or try to explain it to him. Mr H also said the investigator had ignored the issues he had obtaining a password to access the documents TML sent him. He sent us a phone call recording relating to this. And he also highlighted he'd made a complaint and was unhappy TML closed it before contacting him.

Our investigator sent another response to say the call Mr H had with merchant took place after the complaint had been raised with our service which is why he'd not considered it. But having said that he acknowledged there was a misunderstanding of Mr H's request by TML but this was corrected later on in the call, and Mr H was given his password. He also said TML was able to complete its complaint investigation without having to call Mr H, and that it sent a final response letter as is required.

Mr H was unhappy our investigator wasn't making any recommendations and so the complaint was passed to me to decide. I issued a provisional decision that said:

I want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I want to assure Mr H and TML that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

<u>Chargeback</u>

Mr H has explained he understands and accepts our investigator's view on the chargeback. So I'm not going to go over everything again in detail. But I've thought about how TML handled things. The chargeback scheme is one which TML may have been able to recover funds for Mr H. But it is limited by the particular scheme rules that apply. So I've thought *about those rules when deciding if TML has treated Mr H fairly. TML did raise the chargeback but didn't take further action when it was defended.*

Mr H hasn't said the goods weren't as described, or that they were defective. I can appreciate why he is unhappy given he says he changed his mind straight away. But a consumer changing their mind won't always lead to a successful chargeback.

I've thought about whether there's a reason code that could've been used given Mr H returned the goods. But the evidence I've seen indicates Mr H was warned the purchase was non-refundable. So even if I were to find the merchant's term relating to refunds was unfair, I have to take into account what the chargeback rules say. And I think they would take account of the merchant's disclosed refund policy.

Therefore, while I know it disappointed Mr H, I don't think TML acted unfairly by not pursuing the chargeback further. Moreover, I appreciate Mr H is unhappy TML didn't go through his statutory rights when he contacted it. But I'm not sure that's what TML needed to do in this case. TML needed to decide whether there was a reasonable prospect of success taking into account the relevant card scheme's rules – that's the method TML could help him claim his money back. And I think TML acted fairly by submitting the chargeback in the first place.

<u>Service received</u>

Mr H has also complained about the service received. In particular, he says he's unhappy with the inconsistencies on the phone calls; the way his complaint was dealt with; and the service received when trying to obtain his documentation.

I've reviewed the correspondence and phone calls that have been sent in up to the point of the complaint being referred to us. Broadly, I think the agents at TML were courteous and did try to help Mr H. But, based on the evidence I've seen, I think there have been a few things that could've gone better. And I think this has caused Mr H some frustration.

When Mr H first raised the chargeback, the agent indicated it should take around five days for him to receive a response. It looks like this was incorrect, and so I think TML shouldn't have told him this in the first place. Mr H chased up TML around ten days later and was told the merchant would have 45 days to respond to the chargeback and if no response was received, he'd be refunded. The agent also told Mr H that he'd receive a response if the merchant disputed things.

It looks like the merchant responded on 15 November 2021, and the deadline for chargeback response was 3 December 2021. But as Mr H hadn't heard anything, he chased up TML again. So while I accept TML didn't tell him how long it would take to contact Mr H, I can understand why he was disappointed he had to chase TML when it had received a response around a month earlier. Moreover, when he did speak to TML to complain it looks like he was told he'd be contacted within a couple of days. But from what I can see, it took longer than that before he received the final response letter.

So I think there were a few occasions here where TML could've been clearer on its timescales, or not promised Mr H something it was never likely to be able to deliver. I think this has led to Mr H's disappointment and frustration. And Mr H had to chase TML when he wasn't receiving responses as expected.

Mr H has also complained about how his complaint was dealt with. I'm not persuaded TML acted unfairly by not calling Mr H, when I can't see this is what was promised. But I can understand why Mr H was unhappy as he felt he'd not had the chance to explain everything he wanted to complain about. However, TML did send a final response as expected with our *referral rights, and Mr H ultimately had the option to bring the complaint to the Financial Ombudsman if he didn't agree with it.*

I've also thought about the fees for the account. Around the time he raised the chargeback, Mr H enquired about closing the account but was told it would need to remain open while the claim was considered. TML indicates it was willing to waive or refund fees taken while the dispute was ongoing, and the account wasn't being used. I think this is fair in the circumstances.

Finally, I can see Mr H is unhappy with the way TML dealt with his request for information. I can no longer access the call Mr H sent in where he discussed the password, but I've reviewed our investigator's notes on the call. Moreover, like our investigator pointed out this happened after the complaint was referred to our service, so does not technically form part of the original complaint. But from what I can see it looks like Mr H was provided with the password on the call, despite some initial confusion, so I'm not intending to make any further recommendations on that point.

However, given I think there were a few occasions TML didn't give Mr H the correct information. In all the circumstances I think it fair it pays him some compensation in recognition of the impact of that. So I'm intending on directing TML to pay him £50 compensation. I think that is fair in the circumstances.

Mr H agreed with the provisional decision. But TML didn't. In summary, TML said:

- Mr H raised his complaint in December 2021 and that it related to TML not pursuing his chargeback further. So it didn't consider other aspects that hadn't been raised with it.
- It sent Mr H an email regarding the chargeback which gave details of the process.
- It didn't give Mr H a timescale for certain responses.
- It had refunded fees despite there being no error.
- It hadn't received a complaint about the way TML dealt with Mr H's request for information.
- It's not a fair outcome because I've investigated issues which Mr H hadn't raised with TML directly.

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 want to thank both parties for their responses. Having considered everything that's been said, I'm not minded to change the outcome I reached in my provisional decision.

TML has indicated it's unfair to investigate complaint points that Mr H didn't specifically raise with it. I've thought about what it has said. As TML knows, we have an inquisitorial rather than an adversarial remit at the Financial Ombudsman Service. So although Mr H may have only made certain allegations in his complaint to TML, I'm able to look at things quite broadly when deciding whether or not things went as I think they should have done.

Moreover, from listening to the calls that took place before TML said Mr H raised his complaint, I think it was clear he was expressing dissatisfaction with the service. So I'm not going to discard what happened in those calls. And for the reasons I gave in my provisional decision, while I agreed TML on the whole tried to help Mr H, I think there were some things that could have gone better which ultimately caused some inconvenience. This is why I felt a modest amount of compensation was reasonable.

TML has also said it gave Mr H fair warning of how the chargeback process would work. It provided correspondence it sent Mr H. In summary, TML told Mr H it would submit the chargeback for him and that the merchant has 45 days to challenge. If successful, this could result in TML not making the refund. I agree TML hasn't given timescales in writing. But again, as I've set out in my provisional decision, I think some of the information he received over the phone wasn't quite correct, which I think caused him frustration. In the round, I still think £50 compensation is fair in all the circumstances. For the avoidance of doubt, I'm not directing TML to compensate Mr H for something that happened after it had responded to the complaint or in relation to what it offered to do with the account fees.

My final decision

My final decision is that uphold this complaint and direct Think Money Limited to:

- Pay Mr H £50 compensation.
- To the extent it's not done so already, make sure the account fees are waived or refunded from the time the dispute was raised covering the period the account wasn't used.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 November 2022.

Simon Wingfield
Ombudsman