

## **The complaint**

Mr P complains that NewDay Ltd trading as Aqua rejected his chargeback request.

## **What happened**

In April 2021 Mr P booked a cottage holiday from a supplier and paid using his Aqua card. The holiday was due to begin on 7 May 2021.

After completing the booking, Mr P realised he'd been overcharged. He contacted the supplier and was promised a call back, but this never happened. Mr P tried to cancel the booking via the supplier's website but found that he could only obtain a partial refund.

On 20 April 2021 Mr P heard back from the supplier. It asked him to provide a screen shot showing the price he'd been quoted when making the booking. Mr P wasn't able to provide this.

Mr P subsequently raised a chargeback with NewDay. The supplier disputed the chargeback and ultimately it was rejected by NewDay.

Mr P was unhappy with the outcome and complained to NewDay. NewDay said it hadn't received any supporting evidence from Mr P and said it considered Mr P to be liable for the transaction.

Mr P remained unhappy and brought his complaint to this service.

Our investigator didn't uphold the complaint. She said she didn't think NewDay had rejected the chargeback unfairly because the supplier had defended the chargeback with evidence. The investigator also considered whether there was a valid claim under section 785 but said there was no evidence of a breach of contract or a misrepresentation.

Mr P didn't agree. He said that when he spoke to the supplier, it told him that there was a pricing error on its website and that the prices quoted are not what is charged. Mr P said he'd requested a cancellation on 25 April 2021, and he didn't understand why his request hadn't been honoured.

## **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.

Mr P's complaint is that NewDay rejected his chargeback claim so I've considered this first. I will also consider whether there is a valid claim under section 75 because even though NewDay didn't consider this, it's relevant in these circumstances.

### **Chargeback**

A chargeback is a debit or credit card transaction that is reversed by the cardholder's bank when they dispute a transaction. There's no guarantee that the cardholder will be

permanently refunded – this depends on whether the supplier successfully disputes the chargeback.

In this case, Mr P's account was temporarily credited. However, the supplier disputed the chargeback and provide evidence which led NewDay to decide that the chargeback was unlikely to succeed.

Based on what I've seen, I'm unable to say that NewDay didn't follow the chargeback process correctly. It asked both parties for information and made an assessment based on the evidence provided. I can't say that Mr P was treated unfairly or unreasonably.

## Section 75

In certain circumstances, section 75 gives a consumer a right to claim against a supplier of goods or the provider of credit if there's been a breach of contract or a misrepresentation. In order to uphold Mr P's complaint, I would need to be satisfied that there's been a breach of contract or a misrepresentation and that NewDay's response wasn't fair or reasonable.

The supplier's contractual obligation in this case was to provide the service offered (a holiday cottage booking service). There's an implied term that the service will be carried out with reasonable care and skill. Mr P was able to book the cottage, so I'm satisfied that the contractual obligation was fulfilled.

I've taken into account what Mr P has said about being overcharged. It is arguable that a booking service which advertises one price and charges another isn't a service which can be said to have been provided with reasonable care and skill. However, in order to find this, I would need to see evidence that Mr P was offered one price and charged another. Mr P hasn't been able to provide this evidence, so I can't safely conclude that the price changed.

I've also taken into account what Mr P has said about his request to cancel the booking. I can see that Mr P sent an email asking to cancel on 25 April 2021. There's been some discussion about whether Mr P's request was sent to the correct email address. I don't think this is determinative of the matter, because under the terms of the supplier's contract, there is no right to cancel where there is 6 weeks or less before the holiday start date. So, in this case, Mr P had no right to cancel the booking. Because of this, I'm unable to say that there's been a breach of contract.

I've thought about whether there's been a misrepresentation here. Mr P says he was offered one price and charged another. I appreciate that the price was likely to have been one of the main factors in Mr P's decision to book. So, if the price changed as Mr P says it did, then he would have grounds to claim under section 75. However, in order to find that there's been a misrepresentation, I would need to see evidence to show that Mr P was offered one price and charged a higher price. Mr P hasn't provided any evidence to show this.

Based on everything I've seen, there isn't enough evidence to persuade me that there's been a breach of contract or a misrepresentation. I don't think NewDay rejected the chargeback claim unfairly, and I don't think a section 75 claim would be been successful.

## My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 7 October 2022.

Emma Davy  
**Ombudsman**