

## **The complaint**

Mr H is unhappy with how NewDay Ltd trading as Laura Ashley (NewDay) handled his request for help to recover money following the cancellation of flights.

## **What happened**

In February 2020 Mr H booked flights for his wife to travel to Spain. He arranged them direct through the airline, who I'll refer to as B. The flights were scheduled for May 2020, and he paid a total of £161.68 using his NewDay credit card.

Unfortunately, due to the COVID-19 pandemic the flights were cancelled by B. Mr H was given the opportunity to rebook them, which he did in April 2020, for his wife to fly on 11 September 2020, returning on 15 September 2020. He paid an additional £46 to accept the new flights using the same card. However, in July 2020 B emailed Mr H to say that the return flight had been moved to the afternoon of 16 September 2020. Within the email from B, it explained that Mr H had three options – he could accept the time change, arrange a free move of the flight time, or take a full refund for what he had paid.

Mr H couldn't accept the change and he requested a full refund. During the next month he tried to get in touch with B across several platforms, but he didn't receive his refund.

Mr H got in touch with NewDay in August 2020 and asked them to help him recover his money. NewDay asked him to complete the online declaration form and provide evidence, which Mr H did. NewDay then raised two chargebacks for the two amounts he had paid for the flights and credited Mr H's account with the two amounts.

B defended the chargebacks, stating that they operated a no-refund policy. NewDay accepted this defence and decided not to progress the chargebacks any further. The credits applied to Mr H's account in August 2020 were re-debited in October and November 2020 when the chargeback defences were received.

Unhappy with this, Mr H raised a complaint with NewDay. He said NewDay should have asked him for additional information to support his claim, rather than accepting B's comments. He said NewDay's adviser had told him he should have provided everything he had when he initially raised the chargebacks. NewDay issued their final response letter and didn't uphold the complaint. They said Mr H should have provided all the evidence he wanted to be taken into account from the outset, and their online portal for logging claims explained that. They said that it also made clear they wouldn't be chasing any information from Mr H, so he should have been aware to include everything he wanted considered. NewDay did apologise for some of the service Mr H had received, regarding not receiving a call back within 48 hours as he'd been led to expect.

Mr H brought his complaint to our service. Our investigator upheld it. He said he felt Mr H had provided sufficient information when he raised his chargeback claims initially to allow NewDay to represent them against B. He also referred to B's terms and conditions, which confirmed a full refund can be claimed if the timing of the departure is changed by at least five hours and the new departure time isn't acceptable. Our investigator said that B had only

provided a generic response and hadn't referred to their terms and conditions, and if NewDay had represented the chargeback claims, our investigator was confident they would have more than likely been successful, and Mr H would have received his refund. He asked NewDay to refund Mr H the total amount of £207.67, along with 8% simple interest from 1 February 2021 until the date the refund amount was settled.

Our investigator also explained that Mr H couldn't raise a claim under Section 75 (S75) of the Consumer Credit Act 1974 (CCA) as the relevant debtor-creditor-supplier relationship wasn't in place. Although Mr H had paid for the flights, they were for his wife to use and, as she is the contracting party to B, there isn't a valid claim under S75.

NewDay didn't accept our investigator's opinion. They maintained that Mr H had not provided enough evidence to support his claims when he raised them, and that lack of evidence didn't allow them to challenge B's defence. They appreciated that Mr H had provided additional evidence to our service in support of his claims but said that couldn't now be taken into consideration as the chargebacks couldn't be raised again. NewDay said they were deciding on whether they had enough information at the time the chargeback claims were submitted, not whether Mr H had now supplied enough information to support his claims.

As NewDay didn't agree, it's been passed to me to decide.

### **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.

There are different ways a bank can assist customers who have had issues with goods or services not being provided. In some cases, a bank may be able to request a refund from the supplier through the chargeback scheme. This is a way in which payment settlement disputes are resolved between cardholders and suppliers/merchants. They are dealt with under the relevant card scheme rule and in this case that's Mastercard. In certain circumstances the process provides a way for NewDay to ask for a payment Mr H made to be refunded.

There is no obligation for a card issuer to raise a chargeback when a consumer asks for one. But I would consider it good practice for a chargeback to be attempted where the right exists and there is a reasonable chance of success.

When a chargeback is raised, the scheme allows a given period of time – usually around a month – for the supplier to reply to say whether or not they agree to the refund. And when a supplier does defend a chargeback, this can lead to further representations by the cardholder's bank. The process then allows for further representations to be made, if parties do not agree for the issue to be decided by the scheme in a process known as arbitration.

Alternatively, or in addition, a bank can go on to consider whether there has been a breach of contract (or misrepresentation) under S75 of the CCA. S75 says that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services.

In Mr H's case, NewDay did raise the chargeback claims for him based on the information he had provided at the time. Both chargeback claims were defended by B. At this point, I think NewDay should have done more to help Mr H. I'll explain why.

Our investigator has said that he thinks NewDay had enough information from the outset to continue to progress the chargeback claims once they'd been defended by B. I'm not sure I agree with that – I do think Mr H could have supplied more information at the time of raising his chargeback claims, as it's clear from the evidence he has supplied to our service that he had more information to share that showed B had confirmed he was entitled to a full refund if the suggested flight change wasn't acceptable to him.

However, I don't think the defence to the chargebacks from B are particularly strong. And they don't accurately explain the circumstances that have led to Mr H raising the chargebacks. B has said that their terms and conditions state they operate a no-refund policy, and that Mrs H was listed as a 'no-show' for the flights, meaning the flight went ahead without her, and no refund was due as a result. But that isn't what happened, and I'm satisfied B's defence was generic enough to expect NewDay to make some further enquiries with Mr H about the circumstances that led to his wife not being able to accept the amended flight. There was conflicting information in that provided by Mr H and that supplied by B in their defence, and I would expect NewDay to explore those anomalies in more detail before deciding whether to proceed with representation of the chargeback claims. Mr H had provided evidence that it was B that had made the changes to the flight, along with confirmation that those changes weren't acceptable – which was in direct contrast to the reasoning used by B in their defence to NewDay.

Had NewDay reached out to Mr H and asked him to provide a response to B's defence, I'm satisfied that he would have been able to provide additional evidence that confirmed B had agreed to a refund. I say this because he has provided this evidence to our service, and it's dated from the time he was asking B to refund him because the change of time for the returning flight wasn't acceptable. I'm also satisfied that, had NewDay asked Mr H for anything else to support his claims, and once they'd reviewed what he would have been able to provide, they would have been able to represent the chargebacks to B, and I think they would have more than likely succeeded at that stage. It was clear B had agreed that Mr H could ask for a refund and it would have been difficult for them to defend if further representations had been made.

The time limit for NewDay to continue to represent the chargeback claims has now expired. So, my decision is that NewDay must refund Mr H the total amount of £207.67. I'm also asking them to pay 8% simple interest on this amount from the date Mr H's account was re-debited in November 2020 to the date this amount is settled, to reflect the fact he's been out of pocket for some time.

As I'm satisfied NewDay should have done more to contest the chargeback claims for Mr H in this case, I haven't considered S75 in this decision.

### **My final decision**

For the reasons above, I'm upholding this complaint. NewDay Ltd trading as Laura Ashley must:

- Refund Mr H the total amount of £207.67.
- Pay 8% simple interest on that amount from the date they re-debited his account in November 2020 until the date this amount is settled.\*

\*If NewDay Ltd trading as Laura Ashley consider that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr H how much they've taken off. They should also give Mr H a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 22 February 2023.

Kevin Parmenter  
**Ombudsman**