

## **The complaint**

Mr T complains that NewDay Limited, trading as Aqua, won't refund to him the amount that he was charged for a suit.

## **What happened**

Mr T used his NewDay credit card to pay for a suit when he was overseas in October 2020. He says that the cost of the suit was 5,636 currency units but he was charged 56,360 currency units and he didn't notice the discrepancy because the screen on the card machine was tiny. He says that he returned the suit and was told that he'd receive a refund but he had to return to the UK and no refund was received.

He made a claim to NewDay in January 2021 and he says that it refunded the payment of £1,532.65 to his account in February 2021 but took the money from his account again in May 2021. He complained to NewDay but it said that the merchant had challenged its chargeback claim and provided evidence of the receipt for the transaction. It also said that it had considered Mr T's claim under section 75 of the Consumer Credit Act 1974 but had been unable to proceed with the investigation as evidence wasn't provided to support his claim that there had been a breach of contract. Mr T wasn't satisfied with its response so complained to this service.

Our investigator didn't recommend that his complaint should be upheld. He didn't think that NewDay had sufficient evidence to say that the amount that Mr T had been charged was incorrect or that the item had been returned, so he didn't think that any chargeback would've been successful. He thought that NewDay had reached a reasonable conclusion and that it had handled the chargeback fairly. He didn't think there was sufficient evidence to say that Mr T's contract with the supplier was breached or that a misrepresentation had occurred so he thought that NewDay had reached the right outcome on Mr T's section 75 claim.

Mr T has asked for his complaint to be considered by an ombudsman. He says that this has given him depression and anxiety and that his complaint hasn't been understood. He says that he didn't get the suit so he must not be charged any amount for it, the receipt is a fake and displays the shop worker's name and the merchant hasn't provided its CCTV footage. He says that NewDay didn't conduct a proper investigation and favoured the merchant to get commission.

## **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.

Having done so, I agree with the outcome recommended by our investigator for these reasons:

- if a consumer disputes a card payment, the card issuer may be able to make a chargeback claim to the merchant under the relevant card scheme to try to settle the dispute;

- there's no right for a consumer to require that a chargeback claim be made but, if the right to make a chargeback claim exists under the applicable scheme rules and if there's a reasonable prospect of success, I consider it to be good practice for a chargeback claim to be made;
- NewDay made a chargeback claim because Mr T had raised a dispute with it in January 2021 for a payment of £1,532.65 that he'd made in October 2020 and it credited that amount to his account in February 2021 – but the merchant provided a credit card receipt and a handwritten receipt showing the charge of 56,360 currency units;
- New Day said that the merchant had challenged the chargeback and provided evidence for the transaction made so it held Mr T liable for the payment and re-applied the charge of £1,532.65 to his account in May 2021;
- I consider that NewDay acted correctly by making a chargeback claim but it was defended by the merchant and I consider that it was reasonable for it to conclude that there was then no reasonable prospect of the claim being successful;
- there was a delay in NewDay's decision on the claim but I'm not persuaded that it was enough to justify an award of compensation and I consider that it was fair and reasonable in these circumstances for it not to have proceeded any further with the chargeback claim and to hold Mr T liable for the payment;
- NewDay says that it also considered Mr T's claim under section 75 and, in certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier;
- to be able to uphold Mr T's complaint about NewDay, I must be satisfied that there's been a breach of contract or misrepresentation by the merchant and that NewDay's response to his claim under section 75 wasn't fair or reasonable – but I'm not determining the outcome of Mr T's claim under section 75 as only a court would be able to do that;
- Mr T says that the charge should have been for 5,636 currency units, that the receipt is a fake and that he returned the suit for a refund so he shouldn't be charged any amount for it;
- our investigator looked into the name shown on the receipt and he says that it appears to be the name of a fashion designer and that the name on the receipt referred to the designer of the suit, not to another customer;
- I'm not persuaded that Mr T has provided enough evidence to show that the receipt is a fake and the amount shown on the merchant's receipt is the same as the amount shown on the credit card receipt (which also includes Mr T's name) and Mr T hasn't provided any other evidence to support his claim that he only bought a suit or that the charge for a suit was 5,636 currency units;
- nor has he provided any other evidence to show that he returned the suit for a refund, that the merchant had agreed to refund any money to him or that he was entitled under his contract with the merchant to return the suit for a refund;
- I'm not persuaded that Mr T has provided enough evidence to show that there's been a breach of contract or misrepresentation by the merchant and I consider that it was fair and reasonable in these circumstances for NewDay not to have upheld his section 75 claim;

- I don't consider that Mr T has provided enough evidence to show that NewDay didn't conduct a proper investigation and favoured the merchant to get commission or that it should have asked the merchant about its CCTV footage; and
- I sympathise with Mr T for the issues that he's described, including the depression and anxiety that he's experienced, but I find that it wouldn't be fair or reasonable in these circumstances for me to require NewDay to refund to Mr T the payment that he made to the merchant, to pay him any compensation or to take any other action in response to his complaint.

### **My final decision**

My decision is that I don't uphold Mr T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 9 January 2023.

Jarrold Hastings  
**Ombudsman**