

The complaint

Mrs E complains about how NewDay Ltd trading as Amazon Card ('NewDay') handled a claim she made to it about a transaction on her credit card.

What happened

In January 2021 Mrs E paid £473.55 (for flights due to take place that June) using her NewDay credit card.

Mrs E says the airline cancelled the flights and she tried unsuccessfully to get a refund from both the airline and travel agent whom she paid for the booking.

As Mrs E had used her credit card she approached NewDay to help her get the money back.

NewDay says it raised a chargeback but this was defended by the merchant. NewDay didn't take things further.

Mrs E was unhappy with how NewDay handled the claim, so she complained. NewDay didn't agree that it could have done more to get Mrs E's money back. However, it agreed to pay her £25 compensation for incorrect information it gave her during a phone call.

Our investigator considered the complaint. She concluded that in the circumstances (and considering the guidance from the card scheme) NewDay should have continued the chargeback even though the merchant defended it. She considered it fair that NewDay pay Mrs E the money back for the flights due to the way it mis-handled the claim.

Mrs E accepted this outcome, but NewDay didn't respond so the matter has been passed to me for a final decision.

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.

This service is concerned with informal dispute resolution. As a result I have focused on the matters I consider key to this complaint. With this in mind and in the interest of completeness I understand that NewDay wrongly told Mrs E on the phone that her claim had succeeded and for this it paid her £25 compensation. Neither party has raised this as an ongoing concern, and I note Mrs E has accepted the investigator's view thus far. Therefore, in order to fairly decide this complaint and the outstanding matters in contention I don't consider it necessary for me to cover this matter any further nor listen to the relevant call recording.

NewDay are not the supplier of travel services here – so in considering what is fair and reasonable I look at its role in respect of the financial services it provides. In doing so I consider the card protections of chargeback and Section 75 of the Consumer Credit Act 1974 ('Section 75') are relevant here.

Because of my findings on chargeback (below), and because Mrs E has completely

accepted the investigator's recommendation I don't consider it necessary to cover Section 75 in any detail. However, in the interest of completeness (and noting the technical requirements for a valid Section 75 claim) I think it unlikely this would result in Mrs E receiving more compensation than I am already directing NewDay to pay in any event.

Chargeback

A chargeback is a way that NewDay could potentially recover funds for Mrs E by raising a dispute for the amount she paid for the flights. Chargeback is not guaranteed to get money back, but it is often good practice to raise one where there is a reasonable prospect of success.

Chargeback is governed by the particular scheme rules in place. In this case I understand those rules are the Mastercard scheme rules.

Here I have seen evidence both from Mrs E's testimony and emails from the airline confirming that her flights were cancelled by the airline and that she was entitled to a full refund as the service she paid for was not provided. Therefore, it appears that the most appropriate reason code to raise a chargeback under here would be for a service that has not been provided. I note that when Mrs E contacted NewDay she had already attempted to resolve the matter with the merchant and appeared to be within the time limit for a valid claim to be raised.

It appears that Mrs E had a strong claim against the merchant here. From what I can see NewDay did what I would have fairly expected here in that it raised a claim for a service not received. However, the merchant defended the matter – essentially saying that as it was a travel agent it had provided the service in booking the flights. As a result NewDay discontinued the dispute and shortly after debited the temporary credit it had made.

Like our investigator I don't think it was fair for NewDay to discontinue the chargeback on this basis. There is nothing in the chargeback rules that I can see which says that this a valid defence. Furthermore, I note that Mastercard issued specific guidance in its May 2020 dispute resolution note around the impact of Covid-19 where a flight is cancelled, and the transaction was billed through an online travel agent. This guidance is very clear that where the travel agent claims it is only responsible for making the reservation and not providing the flight the issuer still has chargeback rights.

The chargeback scheme views the travel agent as the 'merchant of record' and agent of the supplier regardless of the terms and conditions disclosed to Mrs E. The guidance goes on to state that by accepting the payment for the flight and not just handling the reservation the travel agent assumes responsibility for chargebacks if the service is not provided.

Because the defence by the travel agent was invalid it follows that NewDay should have robustly pursued the chargeback further. Had it done so, considering what appears to be a clear case of services not provided, I think it is more likely than not that the chargeback would have succeeded had it been pushed to the latter stages.

In considering what is fair and reasonable here I think that NewDay's handling of the claim likely deprived Mrs E from getting a refund. So I consider it would be fair for it to refund her the value of her dispute in the particular circumstances here.

Putting things right

Our investigator has stated it would be fair for Mrs E to have her card re-worked as if the chargeback had succeeded plus interest on any credit balance. She said NewDay should

calculate this from the date it discontinued her claim. Noting that there is not necessarily a science to when Mrs E was arguably deprived of funds this seems a broadly fair way to put things right in the circumstances as presented to me here.

My final decision

I uphold this complaint and direct NewDay Ltd trading as Amazon Card to rework Mrs E's credit card as if the card were permanently refunded the £473.55 on 17 September 2021 paying her 8% simple yearly interest on any credit balance that might arise as a result of this reworking calculated from the date of said credit balance to the date of settlement.

If NewDay considers it is required to deduct tax from the interest element of my award it should provide Mrs E with a tax deduction certificate so she may claim a refund from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 27 June 2023.

Mark Lancod
Ombudsman