

The complaint

Mr G complains that NewDay Limited, trading as Aqua, won't refund to him the money that he paid for three purchases and about the customer service that he received.

What happened

Between July 2021 and February 2022 Mr G had disputed payments for nine purchases for which he'd used his NewDay credit card. NewDay had refunded the payments that he'd made for six of those transactions but it hadn't refunded the payments that he'd made for the other three transactions. He'd paid £563.99 for some flights in October 2021, £99 for a Covid test in November 2021 and £486.98 for a washing machine also in November 2021. Mr G complained to NewDay in February 2022 because he'd not received a call back from its disputes team after being advised that it would call him. NewDay upheld his complaint and offered him £40 compensation – which it later increased to £80 and which was credited to his account. Mr G then complained to this service and said that NewDay should refund all of the disputed transactions.

Our investigator didn't recommend that his complaint should be upheld. He thought that the compensation that NewDay had paid for the missed call back was sufficient. He didn't think that NewDay had done anything wrong by not refunding the three transactions. He said that NewDay hadn't considered the transactions under section 75 of the Consumer Credit Act 1974 but he was satisfied that claims under section 75 wouldn't have had a chance of success based on the evidence that NewDay had already received.

Mr G has asked for his complaint to be considered by an ombudsman. He says that the washing machine wasn't delivered to his address but an address in the area and the confirmation was sent after his phone was hacked, the flight tickets were cancelled by e-mail and that the Covid test was taken by someone else and that the merchant had got his details mixed up with another person's. He says that he did a home Covid test which was positive and that was why he couldn't take the flights.

Our investigator asked him to provide evidence to demonstrate the above but he says that he's not able to retrieve the information requested as he has a new e-mail account. He says if an award is not made in his favour he will take this case to the small claims court.

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:

- Mr G complained to New Day in February 2022 because he'd not received a call back from its disputes team after being advised that it would call him - NewDay upheld his complaint, apologised and credited £80 compensation to his account;

- I can understand the frustration that Mr G will have felt when he didn't receive the call back but I consider that NewDay's apology and the £80 that it's credited to his account is a fair and reasonable response to his complaint and I'm not persuaded that a higher amount of compensation is justified in these circumstances;
- Mr G complained to this service and said that NewDay should refund all of the disputed transactions so I've considered whether it should have made a chargeback claim for those transactions and whether it should have refunded him for those transactions under section 75;
- 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 says that it contacted the merchant about the flight tickets and the merchant provided proof that the tickets were delivered to Mr G by e-mail, it said that the flight booking hadn't been cancelled by Mr G and that the flight went ahead as planned – so Mr G wasn't entitled to a refund of the £563.99 that he'd paid for the flights;
- Mr G says that he cancelled the flights by e-mail because he had a positive Covid test – but he's not been able to provide any evidence to show that he sent an e-mail to the merchant to cancel the flights, that he had tested positive for Covid or that he was entitled to a refund – so I'm not persuaded that NewDay acted incorrectly by not refunding the payment to his account;
- NewDay says that it contacted the merchant about the washing machine and the merchant said that it was delivered to Mr G and that Mr G confirmed that he'd received it both by message and in writing;
- Mr G says that the washing machine wasn't delivered to his address but to an address in the area and the confirmation was sent after his phone was hacked – but he's not been able to provide any evidence to show that the washing machine was delivered to another address or that the confirmation message was sent after his phone had been hacked - so I'm not persuaded that NewDay acted incorrectly by not refunding the payment to his account;
- NewDay says that it contacted the merchant about the Covid test and it provided evidence to show that the appointment wasn't cancelled, the test took place and the result was negative;
- Mr G says that the Covid test was taken by someone else, the merchant had got his details mixed up with another person's and he did a home Covid test which was positive – but he's not been able to provide any evidence to show that he cancelled the test and was entitled to a refund - so I'm not persuaded that NewDay acted incorrectly by not refunding the payment to his account;
- 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;
- NewDay didn't consider whether Mr G was entitled to a refund for the above transactions under section 75 – but I consider that the evidence that it obtained from the merchants was enough to show that there hadn't been a breach of contract or a misrepresentation for each of those transactions – so if it had considered his claims

under 75 I consider that it would have been fair and reasonable for it to conclude that the claims shouldn't be upheld;

- other than not calling Mr G back, I'm not persuaded that there's enough evidence to show New Day has acted incorrectly in these circumstances; and
- I find that it wouldn't be fair or reasonable for me to require New Day to refund to Mr G any of the amounts that he's claimed, 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 G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 10 November 2022.

Jarrold Hastings
Ombudsman