

The complaint

Ms B is unhappy how NewDay Ltd trading as Aqua (NewDay) handled her request for help to recover money following the cancellation of her son's holiday.

What happened

On 23 October 2019 Ms B went with her son to arrange a trip abroad for him. They visited a travel agent, who I'll refer to as S. Ms B paid the deposit of £499 on her NewDay credit card. Her son was due to fly out on 29 February 2020 and return on 1 June 2020. He paid the balance of the trip on his own card.

Before Ms B's son was due to travel, the trip was cancelled because of the COVID-19 pandemic. Ms B spoke to S and was in the process of obtaining a refund for the trip. However, S went into liquidation in August 2020 before the refund had been given. The trip was covered by ATOL, and Ms B's son was able to recover his money. But ATOL redirected Ms B to NewDay to seek recovery of the deposit she had paid.

As she was still without a refund of the deposit she paid, Ms B got in touch with NewDay on 22 September 2020 to ask for their help. At this point, NewDay opened a dispute on their system and told Ms B that she needed to complete and return a dispute declaration form, which was sent to her. Ms B has said she returned this to NewDay.

Having not heard from NewDay for a couple of weeks, Ms B got back in contact with them. NewDay told Ms B they hadn't received her dispute declaration form, and she was out of time to raise a chargeback in line with the chargeback scheme rules. They sent her a letter the following day to confirm this.

Ms B wasn't happy about this and complained to NewDay. NewDay responded and upheld Ms B's complaint for service issues. They said she should have been told when she first contacted them in September 2020 that a chargeback couldn't be raised as it was out of time. They also said Ms B hadn't received a call back that had been promised to her. NewDay credited her account with £30 but confirmed the decision not to raise the chargeback was correct in line with the applicable scheme rules, which in this case were administered by Mastercard. NewDay referred Ms B's claim to their Section 75 team, but they said she didn't have a right to claim under Section 75 as there wasn't a debtor-creditor-supplier (DCS) relationship in place. Ms B had paid the deposit for the trip for her son, who was the contracting party, so Ms B didn't have a direct relationship with S.

Ms B brought her complaint to our service. Our investigator upheld it. She said she agreed with NewDay's response in relation to any Section 75 claim Ms B might want to make. But she felt NewDay had enough information when Ms B first got in contact with them in September 2020 to raise the chargeback claim, and it would more than likely have been successful had they done so. She asked NewDay to refund Ms B the total amount of £499. She also asked for 8% simple interest to be added to that amount to reflect that Ms B had been without the money for some time.

NewDay didn't agree with this. They told our investigator the chargeback would have been

raised if Ms B had returned the dispute declaration form within seven days of receiving it. NewDay said they didn't take the chargeback any further because the form wasn't received – and by the time Ms B got back in touch with them, the time limit to raise a chargeback had passed.

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.

Having done so, I agree with our investigator here. I think NewDay had enough information when Ms B initially contacted them to raise the chargeback on her behalf. As I think a chargeback claim should have been raised, and would more than likely have been successful, I won't be commenting on the Section 75 element within this decision. I'll explain why I think this complaint should be upheld.

There are different ways that 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 rules and in this case that's Mastercard. In certain circumstances the process provides a way for NewDay to ask for a payment Ms B made to be refunded. Those circumstances can include where services aren't supplied.

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.

In Ms B's case I think NewDay misunderstood the relevant card scheme rules from the outset. Each chargeback reason has a code attributed to it. As Ms B's son's trip had been cancelled, the code 'Goods or Services Not Provided' would be the appropriate one for NewDay to pursue a chargeback against. The rules set out the timeframe for making a chargeback claim, as well as the supporting documents needed to allow a chargeback claim to be brought. The rules set out that a chargeback claim can be raised within 120 days of the latest anticipated delivery or performance date. In Ms B's case, that is 120 days from the return flight scheduled for her son on 1 June 2020 – which allowed her until 29 September 2020 to raise a chargeback.

But within NewDay's final response letter to Ms B and within their business submission to our service, they have used different dates to confirm when they believe the chargeback needed to be brought by. In their final response letter to Ms B in January 2021, NewDay have said she had 120 days from when her son was due to start his trip to raise a chargeback claim. But in their submission to our service, NewDay have said that Ms B had 120 days from the date of the transaction with S in October 2019 in which to raise a chargeback – meaning she had until sometime in February 2020 in which to raise it. Neither of those dates are correct and both suggest a misunderstanding of the scheme rules.

NewDay have also said they needed Ms B's completed dispute declaration form to raise a chargeback claim against the supplier. The scheme rules say that an email, message, letter, or Dispute Declaration Form would be needed to allow a chargeback claim to be brought. And the information needed to include a description of Ms B's complaint in enough detail to enable all parties to understand the dispute. It also required a '*reasonably specific description of the goods/services purchased*'. NewDay's account notes from the time of

Ms B's first telephone call with them state that Ms B wanted to raise a dispute against S (a travel operator) for £499 as they had now gone into liquidation. I'm satisfied that was enough to meet the criteria for a chargeback claim to at least have been raised. I'm also satisfied that, had NewDay been aware of the scheme rules as they should have been, they would have been able to get any further information required from Ms B at this time to raise a chargeback on her behalf. And, had NewDay made Ms B aware of the correct timeframe in which to pursue the chargeback, I'm persuaded that any additional information required from Ms B would have been provided in time.

Had NewDay acted as expected from the outset, I think the chargeback claim would have had a good chance of success, as it would have been difficult for S to provide a valid defence to the claim. They had cancelled the booking and had subsequently gone into liquidation.

In NewDay's response to our investigator's view they've said that the only reason the chargeback wasn't taken further was because Ms B didn't get the dispute declaration form back to them before 29 September 2020. They've said that, had she done so, they would have continued to raise the chargeback claim on her behalf. But, based on the evidence I've seen from NewDay and the reasons they've previously given for saying the chargeback had been raised out of time, I can't say that I agree with them. I think it's clear that NewDay had misunderstood the timeframe for raising a chargeback, and irrespective of them receiving the form or not, they would have continued to tell Ms B she had brought the chargeback out of time.

As I'm satisfied NewDay should have pursued the chargeback claim with the information they had and should have been more aware of the timeframe explained in the scheme rules, I would normally now ask NewDay to look at raising the chargeback, provided it was still within the time limits specified by the rules. But it is now outside of those time limits, so my decision is that NewDay should reimburse Ms B the total amount of £499. I'm also asking them to pay 8% simple interest on this amount from the date the chargeback should have been raised – 22 September 2020 – to the date this amount is settled, to reflect the fact that Ms B has been out of pocket now for some time.

My final decision

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

- Refund Ms B the total amount of £499.
- Pay 8% simple interest on this amount from the date the chargeback should have been raised – 22 September 2020 – to the date this is settled.*

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 3 January 2023.

Kevin Parmenter
Ombudsman