

## The complaint

Mr M is unhappy how NewDay Ltd, the issuer of his Amazon credit card, handled his request for help to recover money when he was unable to make use of pre-booked airline flights.

## What happened

In November 2021, Mr M paid for flights for him and his family to travel abroad. The flights were scheduled for mid-December 2021, and Mr M paid a total of £6,265.11 for the flights. He paid this amount on two separate credit cards, with £3,000 being paid on his NewDay card. The flights were arranged through a travel provider, who I'll refer to as S.

Unfortunately, a couple of days before they were due to travel Mr M and a family member tested positive for Covid-19. He contacted S to let them know, and to ask for a full refund of the flight tickets as they wouldn't be needed. S confirmed to Mr M that he wasn't entitled to a full refund. They said the airline would allow a change of date up to a year in advance, and there would be a £235 fee per ticket if he wanted to cancel. Mr M was unhappy with this. He explained to S that he was told he would be entitled to a full refund by their sales agent, if a positive Covid-19 test was the reasons the flights couldn't be taken. S disputed this and referred Mr M to the terms and conditions of his booking. They didn't refund Mr M.

Mr M got in contact with NewDay at this point and asked them for their help. He completed a dispute resolution form and sent it to NewDay along with the evidence he felt supported his claim. NewDay raised a chargeback for him, and temporarily credited his account with £3,000 while S considered it. S defended the chargeback claim, and NewDay decided their defence was sufficient to prove that a chargeback claim wouldn't be successful. They let Mr M know, and they re-debited the amount from his account. They also explained to him that a claim under Section 75 (s75) of the Consumer Credit Act 1974 would be unsuccessful as there wasn't enough evidence to suggest S had breached or misrepresented the terms and conditions of the contract between them and Mr M.

Mr M complained to NewDay. Part of his complaint was that he had received a full refund for the other half of the transaction that he'd made, using a different card. NewDay didn't uphold his complaint. They said he hadn't provided any evidence to show he was entitled to a full refund, in contrast to what S had provided in defence to the chargeback. Because of that, NewDay said they didn't think the chargeback would succeed and they had made the decision not to take it any further. They said they couldn't comment on the other refund that Mr M had received. They did acknowledge that Mr M had previously experienced some long wait times while trying to speak to them on the phone, and they credited his account with £40 compensation to reflect that.

Mr M remained unhappy and brought his complaint to our service. While our investigator was looking into it, Mr M received a partial refund of £2,295 from S. The only amount outstanding was £705 that had been charged by the airline following his cancellation request. Our investigator didn't uphold the complaint. He said he felt the evidence provided by S in defence of the chargeback claim was strong, and it was fair of NewDay to make the decision not to take the claim any further. He didn't think it had a reasonable chance of success had they done so. He also said NewDay had acted fairly when deciding not to

pursue a claim under s75. Our investigator said the £40 credited to Mr M was a suitable amount for the poor customer service he had received.

Mr M didn't agree. He maintained that he was told by S prior to booking the flights that he would be entitled to a full refund if a cancellation was required because of a positive Covid-19 test.

As Mr M 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 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 Mr M made to be refunded. Those circumstances can include where a refund hasn't been provided.

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.

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 been a breach of contract or misrepresentation by the supplier of goods or services.

But for s75 to apply, there are certain criteria that need to be satisfied before looking at whether a breach of contract or misrepresentation has occurred. These include that there is a specific relationship between the parties, known as the debtor-creditor-supplier (DCS) relationship and that the purchase meets a certain cash price.

It's important to note that neither a chargeback nor s75 are a guarantee that a consumer recover their funds. It's not uncommon for a bank to deal with a customer dispute by raising a chargeback first and then, if that is declined, to consider whether a valid claim exists under s75. Usually, it won't make much difference as to which route a bank follows, so long as the bank acts fairly and reasonably in assisting its customer to recover their funds.

In Mr M's case, NewDay did raise the chargeback claim for him when they received his dispute resolution form and evidence, and they temporarily credited his account with £3,000 while S were given time to consider things. S defended the chargeback and provided their evidence to NewDay to consider. Having done so, NewDay felt the chargeback claim wouldn't succeed if they were to represent it and explained to Mr M that they wouldn't be able to take it further. I can understand why NewDay did that. The terms and conditions

provided by S didn't confirm Mr M would be entitled to a full refund if he chose to cancel the flights, even if the reason was a positive Covid-19 test.

Mr M did say to NewDay that he felt the terms and conditions supplied by S weren't the ones in place when he made the payment for the flights in November 2021, but despite requests from NewDay he didn't supply them with the terms and conditions he said he'd agreed to. Because of this, and because of a lack of evidence to confirm Mr M should receive a full refund, I'm satisfied NewDay acted fairly by not taking the chargeback claim further at this point. I'm not persuaded there was any chance of success based on the information that had been supplied by both parties. I understand Mr M has said that S had told him during a phone call while the flights were being booked that he would be entitled to a full refund if the reason for cancellation was because of a positive Covid-19 test, but no evidence of that was provided and that isn't contained in the terms and conditions. So I can't say that NewDay acted unreasonably by explaining to Mr M that his chargeback wouldn't succeed, and re-debiting the £3,000 from his credit card.

NewDay also considered a s75 claim for Mr M but declined it for broadly the same reasons. They said that Mr M had paid S to book the flights as a booking agent, and S had done this for him. The flights went ahead and were booked as agreed by S, so NewDay said they hadn't breached their terms and conditions by not allowing a full refund. They said there wasn't anything contained in the terms and conditions to confirm Mr M would be entitled to a full refund if he chose to cancel the flights and the flights went ahead, irrespective of the reason given for cancellation. Having reviewed the terms and conditions, I'm satisfied NewDay have acted fairly by declining Mr M's s75 claim.

NewDay explained to Mr M that they couldn't consider a s75 claim against the airline as the necessary relationship between the parties wasn't in place. As he had paid S to arrange the flights, and S had then paid the airline, NewDay said the DCS relationship had been broken and a valid s75 claim right didn't exist. Having considered this, I'm satisfied NewDay have acted reasonably by explaining this to Mr M.

NewDay have credited Mr M's account with £40 for the long waiting time he experienced when he was trying to speak to them about their reasons for not taking his claim any further. I think that's reasonable here. NewDay have accepted that, at times, their customer waiting time was longer than they would like it to have been. But, NewDay have also explained that they arranged a suitable time to call Mr M back and, when the call was made, Mr M was unable to take the time to discuss things with them. He never attempted to call back after that point. So, while NewDay have recognised some failings in the customer service they provided to Mr M, it hasn't had a negative effect on his claim, and they did try to resolve things with him. I think their payment of £40 is reasonable in the circumstances.

I know my decision will come as a disappointment to Mr M as he feels he's out of pocket though no fault of his own. And I know he's unhappy as he's received a full refund from the other card issuer in relation to the flights. I can't comment on that. But what I'm deciding here is whether NewDay acted fairly with the information they had from both parties. As mentioned previously, neither chargeback nor s75 are a guarantee that Mr M will recover his funds. And, in this case, I'm satisfied NewDay acted fairly considering the information that had been provided. I won't be asking them to do anything more here.

### **My final decision**

NewDay Ltd have paid Mr M £40 to settle this complaint. I think that's fair in the circumstances.

So, my decision is that NewDay Ltd don't need to do anything more here.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 May 2023.

Kevin Parmenter  
**Ombudsman**