

The complaint

Mr N complains about the actions NewDay Ltd (“NewDay”) took when he asked it to help him with a dispute about a purchase he made using credit provided by it. Mr N also complains about NewDay’s complaint handling.

What happened

Mr N purchased two bed sheets from a supplier I will call “S”. Mr N used his NewDay credit card to buy the sheets.

Mr N was dissatisfied with the purchase. In particular, Mr N’s position is that S did not send him the sheets he paid it for, rather it sent him different inferior sheets. Mr N complained to S and ultimately he returned the sheets to it. But S would not reimburse him for the purchase because it said it did not stock the type of sheets Mr N sent to it. Therefore there was no possibility that it sent the sheets by mistake. As a result S denied it had ever supplied these sheets to him. For all of these reasons, S did not agree that it needed to reimburse Mr N.

Dissatisfied Mr N complained to NewDay. NewDay indicated had two possible options for getting Mr N his money back. These options were a process known as chargeback (I will talk about what chargeback is below in the what I’ve decided and why section) and a claim against itself under Section 75 of the Consumer Credit Act 1974 (“Section 75”).

NewDay started the chargeback process. However, S via its bank raised a defence to the chargeback. NewDay considered S’s defence to be a strong one according to the rules that apply to chargebacks. Therefore, NewDay concluded it was pointless trying to take the matter further, as there was no realistic prospect of success. However, Mr N’s position is that NewDay could and should have gone further. Moreover the way Mr N sees it NewDay let him down by believing the supplier over him.

NewDay was unable to go ahead with a claim against itself under Section 75 because Mr N’s claim did not meet the qualifying conditions for such a claim.

NewDay agreed it had mishandled Mr N’s complaint when it came to the information it gave him about complaining via email. NewDay credited Mr N’s account with £25 to make up for this.

Mr N was not satisfied with NewDay’s response, so he complained to this service. Mr N laid particular emphasis on his position that he thought he had provided NewDay with sufficient evidence to support his version of events.

One of our investigators looked into Mr N’s complaint. Our investigator did not recommend upholding Mr N’s complaint. Specifically, our investigator acknowledged Mr N’s strength of feeling about the information he’d provided. However our investigator did not agree with Mr N’s position. Rather our investigator concluded that NewDay had not done anything wrong in relation to the steps it took to recover Mr N’s money for him. Further, our investigator explained that this service does not have the power to look at the part of Mr N’s complaint that is simply about complaint handling.

NewDay appeared to accept our investigator’s recommendation, Mr N did not. Mr N asked that an ombudsman review his complaint.

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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

As Mr N paid for the goods using his credit card and wanted a refund, I've thought about whether NewDay dealt with his request fairly. The chargeback process is relevant in this case. This is a way in which payment settlement disputes are resolved between card issuers and merchants. They are dealt with under the relevant card scheme rules.

In certain circumstances the process provides a way for NewDay to ask for a payment Mr N made to be refunded. Those circumstances include where goods aren't supplied or as described/misrepresented by the company Mr N paid.

A chargeback doesn't guarantee a refund. The supplier's bank could put forward a defence to any chargeback claim as was the case here.

Moreover, the chargeback process is a voluntary one (customers like Mr N have recourse against suppliers via the courts) so NewDay was under no obligation to carry one out.

That said, it is good practice for a bank to attempt a chargeback where the right exists and there is some prospect of success. However, sometimes the circumstances of a dispute mean it won't always be appropriate for the financial business to raise a chargeback. I am persuaded this is the case in the complaint here. I say this for several reasons which I'll go through below.

S raised a strong defence to Mr N's complaint, in that it said it did not stock the sheets so there was no way it could have mistakenly sent them to him. Mr N may not agree that this is a strong defence, but I think it was under the chargeback rules. It's not the case that NewDay chose to prefer S's stance. Rather as I have said already under the relevant rules S's defence was strong. I say this even though I realise it is not unheard of for genuine mistakes to be made when suppliers unknowingly send the wrong items. It is also not unheard of for unscrupulous vendors to knowingly pretend to sell high value items but send something else instead, usually a low value item. But NewDay had no information from Mr N that could have successfully countered S's defence. Therefore there was nothing further NewDay could reasonably have done.

It follows that I have no proper basis for saying that NewDay acted incorrectly. It also follows that I do not uphold this part of Mr N's complaint.

Mr N also wants to rely on consumer law as far as it gives him rights against NewDay where he purchased goods using credit provided by it. In particular, he thinks he has rights because his stance is that the goods were misrepresented to him and/or that S had breached its contract with him.

But as regards Section 75, this provision does not apply in all circumstances. One of the qualifying conditions for such a claim is that the claim relates to any single item to which the supplier has attached a cash price of more than £100. Here each single item cost less than £100. Although, it is arguable whether the single item here was the total purchase or each individual item in the total purchase. But even if I accept that the qualifying conditions were met this gets Mr N no further. I say this because Mr N did not have sufficient evidence to show that on balance the goods he sent back to S were the goods it originally supplied to him. In other words he could not demonstrate that misrepresentation or breach of contract. On that basis, I am not persuaded that NewDay acted inappropriately in not reimbursing Mr N. So it follows I don't uphold this part of Mr N's complaint.

Mr N complained about NewDay's complaint handling. I'm sorry to disappoint him, but I can't look at that part of his complaint. That's because complaint handling isn't an activity listed within the rules that govern this service. Complaints about how a complaint has been dealt with simply are not something that falls within the remit of this service. I realise this may be very galling for Mr N as he laid a lot of emphasis on this issue in his complaint to us. But he can take this issue no further with our service.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 7 March 2023.

Joyce Gordon
Ombudsman