

The complaint

Ms B complains NewDay Ltd trading as Debenhams didn't deal fairly with a dispute she raised over a payment she made on her card for a COVID-19 testing service.

What happened

Ms B used her NewDay credit card in November 2020 to pay £157.99 for two COVID tests from a company I will call "CT". Ms B bought the tests in order to be able to meet the requirements to take a flight, so it was important that she received the results by a particular date.

Unfortunately, the results did not arrive in time and Ms B says she needed to cancel her holiday as a result. She asked CT for a refund, but had difficulty getting through to them and became concerned as she noticed there were lots of other customers of CT in a similar situation.

Ms B then contacted NewDay to ask for help getting her money back. NewDay attempted what's known as a "chargeback" to reclaim the payment for the tests. CT disputed the chargeback and following this NewDay decided not to pursue its attempt to reclaim the payment further. A temporary refund which had been put into Ms B's account was taken back. Unhappy with this decision, Ms B complained, but NewDay refused to change its position and Ms B therefore referred the matter to this service for an independent assessment.

One of our investigators looked into the case and made the following findings:

- It appeared that each COVID test was priced at £100 or under, so Ms B did not benefit from the protection provided by Section 75 of the Consumer Credit Act 1974 ("CCA") as this only applied to items costing more than £100.
- However, NewDay had not handled the chargeback process fairly and reasonably. When CT had disputed the chargeback, the points they had made in their defence didn't address the reasons for the chargeback being made. NewDay should not have accepted such an obviously invalid defence, and pursued the chargeback more robustly.
- Media reporting on CT at about the same time Ms B had problems with their testing service, suggested the company was routinely unable to meet its commitments to customers, so it seemed likely the chargeback, robustly-pursued, would have been successful.

Concluding, our investigator said NewDay should refund Ms B the £157.99. NewDay disagreed with our investigator's view. It said it had reviewed the evidence Ms B and CT had provided, after CT disputed the chargeback, and had noted that Ms B had received the test results but hadn't evidenced *when* she was meant to receive them. Because of this, it didn't think it could have pursued the chargeback further with any success, and had been right not to.

Our investigator asked why NewDay hadn't asked for this evidence as part of its review after it had received the response from CT, or allowed Ms B to review the response so she could challenge it as appropriate. It replied that there had been a change in the Mastercard process in October 2020 which meant it could no longer add further evidence once a chargeback had been disputed.

Following this, our investigator reviewed the Mastercard rules for the relevant time and concluded they did not support what NewDay had said. He said that in any event Ms B had provided the date CT had told her she'd receive the results, and confirmed when they were actually received, but that this hadn't been addressed at all in the response to the chargeback. So he remained of the same opinion: that NewDay should provide a refund.

No agreement could be reached and the case has now 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.

When a person pays for goods or services on a credit card, their card issuer may be able to help when something goes wrong with the purchase. This may be because they have a legal obligation to consider a claim under section 75 of the CCA, or because they are able to dispute the payment via the dispute resolution mechanisms run by the card schemes.

Section 75 of the CCA

Our investigator didn't think the protection afforded by section 75 of the CCA applied to Ms B's purchase. This hasn't been disputed by either party to the complaint, and I will deal with it only briefly by saying that our investigator was correct to conclude this type of protection didn't apply to the purchase. That is because section 75 only applies to items with a price of more than £100 and it would appear that each test in this case was priced under the threshold.

Chargeback

The dispute has centred on the other main avenue via which NewDay could have assisted Ms B. In certain circumstances, a card issuer can attempt to claim a refund of a payment, or part of it, under the dispute resolution process operated by the card scheme to which the card belongs. Disputing a payment in this way is usually known as a "chargeback".

Chargebacks are not guaranteed to succeed and can be challenged by the other side to the dispute. The other side will normally be the merchant from whom a person made their purchase, sometimes represented by the company which provides the merchant with their facilities for accepting cards.

A consumer cannot demand that their card issuer attempts a chargeback, and that is because it is not a consumer right. However, I would expect the card issuer to attempt a chargeback as a matter of good practice, so long as the chargeback would meet the criteria set out by the card scheme and would have a reasonable prospect of succeeding. I would also expect a card issuer to administer the chargeback process in a competent way and not make errors. This could include, for example, pursuing the chargeback to the next stage (pre-arbitration) after receiving an obviously invalid challenge or defence from the other side to the chargeback.

The chargeback – CT's response and NewDay's decision

In this case, Ms B filled out a form from NewDay to start the chargeback process. The form explained that the chargeback was being made because Ms B had not received goods or services by the agreed date. On the form she was asked to describe what she'd ordered, provide the date she was meant to receive it, and any other evidence she thought was relevant.

In the appropriate boxes on the form, Ms B said she had ordered COVID testing kits from CT which had arrived, but when she had returned them she hadn't been provided with the test certificates in time to fly. She said she'd not been able to get hold of CT. She said she was told she'd get the results by 25 November, but didn't receive them until 10pm on 26 November, after she'd been due to fly. She added that there were lots of complaints online about CT and their webpage referred to the problems they were having.

This form was sent to CT as part of the chargeback process. I think it made it clear what the problem was. CT (represented by its payment services provider), disputed the chargeback and said the following:

"The cardholder gave consent to bill and authorized this payment by entering [credit card] and billing information on a secure website. [Cardholder] authorized payment... We have strong reason to believe that the cardholder fully authorized this transaction and is falsely disputing this transaction based on the evidence that the following payments were also made by this cardholder and were not disputed..."

This clearly did not address the chargeback which had been raised and seemed to deal instead with a complaint which Ms B hadn't made: that she hadn't *authorised* the payment.

NewDay's internal notes on Ms B's account suggest the weaknesses in CT's defence were recognised, and also that the chargeback had not been submitted with the most appropriate reason. On 14 January 2021 the following text appeared in a note (I have paraphrased to make it easier to read):

"Defence received for Ms B's chargeback...1st chargeback raised for "Services Not Provided" however as per the dispute form Ms B has received the test report but received it late, hence chargeback should have been raised "Not as Described". CT has not provided any strong documents to defend the claim."

About a week later another note appeared which said:

"Ms B's dispute form says service received but not provided evidence for defective [service] claim".

This was followed up a few days later by a longer note which said essentially the same thing, that Ms B hadn't provided evidence to show that she didn't get the test results on time. At this point NewDay decided not to take the chargeback any further.

When our investigator challenged NewDay on this, it maintained that it was the right decision, adding that it didn't ask Ms B to provide the additional evidence because this wasn't possible due to the Mastercard rules.

Was this fair and reasonable? In order to determine this, it has been necessary to examine the rules NewDay referred to.

What the relevant rules say

The relevant card scheme rules in Ms B's case say that in order for a valid chargeback to be

raised when services were not as described (for example that they did not arrive on time), the following information needs to be provided with the chargeback:

- A description of the complaint in enough detail to allow all parties involved to understand it, and specifically addressing the following points:
 - That the cardholder had attempted to contact the merchant to resolve the dispute, and the merchant had refused to issue a refund (or not responded).
 - That the services had not met their description or that the merchant had not honoured the terms and conditions of the contract with the holder.
- Optionally, documentation that supports the cardholder's dispute including, but not limited to, the original receipt, invoice, contract etc.

Ms B's completed dispute form appeared to have met these requirements, other than perhaps the optional one as she did not provide invoices or similar documentary evidence.

The rules also go on to say that in Ms B's set of circumstances, where the only information that she'd not provided was *optional*, that further evidence of this type could be submitted later, in response to CT's defence of the chargeback. The rules say that a card issuer can progress the matter to the next stage, called pre-arbitration, for several reasons which include an invalid defence, or where the cardholder can provide additional evidence to address a defence.

Conclusions

So where does this leave things? Based on my findings above, my view is that NewDay responded inappropriately to a chargeback defence from CT which was clearly invalid. NewDay's internal notes show that it was aware the defence was deficient.

I think NewDay could, and should, have taken the chargeback process further based on the invalid nature of the defence alone. But even if that's not correct, I think its failure to ask Ms B for further evidence before taking the decision to stop the chargeback process at that point, unfairly prevented her from having the chance to obtain a refund via this route.

This doesn't necessarily mean that NewDay should now refund Ms B – that obviously wouldn't be right if she wasn't truly entitled to one. But, having considered the available evidence carefully, on balance I am satisfied that she was. This is based on later emails from CT indicating the reason they couldn't refund her was because she'd already started the chargeback process, and extensive media coverage from the time which suggested CT had encountered serious problems providing tests kits and results in a timely manner.

It would therefore be fair if NewDay treats Ms B as though it had continued the chargeback process and this had come to a successful conclusion. This means it will need to backdate a refund of £157.99 on her credit card account, to the date it wrongly re-debited the amount.

My final decision

For the reasons I've explained above, I uphold Ms B's complaint and direct NewDay Ltd to take the following actions:

- Refund £157.99 to Ms B's credit card account, as though this had not been re-debited on 25 January 2021.

- Refund any interest, fees or charges Ms B has incurred as a result of the £157.99 amount being re-debited on 25 January 2021.
- If refunding Ms B would mean that a credit balance would have existed on her account at any time, pay Ms B 8% simple interest* on any credit balance for the period of time that it existed.

If NewDay considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms B how much it's taken off. It 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 29 December 2022.

Will Culley
Ombudsman