

The complaint

Mrs T complains that NewDay Ltd didn't uphold her claim after the supplier didn't provide her with a refund for a returned item she acquired using her NewDay credit card.

What happened

Mrs T ordered a mobile phone on 30 August 2021. She returned the phone to the supplier but didn't receive a refund. She contacted the supplier about this but after four weeks with no refund she contacted NewDay. She says she was told to log a dispute on the transaction which she did. After a few days Mrs T's account was credited with the cost of the phone. She thought this had resolved the issue but in December 2021 she received an email from NewDay saying the seller had said the dispute wasn't valid and had provided proof of the transaction. Mrs T's account was then re-debited the cost of the phone. Mrs T says the dispute was never about the phone being received but about her not getting a refund after she returned it.

NewDay said that the chargeback was raised, and a temporary credit applied to Mrs T's account on 12 October. However, it found that Mrs T hadn't provided evidence to show that the supplier had agreed to provide a refund only that there had been a delay in the refund that the supplier was looking into. It therefore held Mrs T liable for the transaction and re-debited her account on 20 December. It said it only had one attempt to raise a chargeback and the required evidence hadn't been supplied. It said that if Mrs T had further evidence of the refund being provided then she should provide this, and her claim could be considered under section 75 of the Consumer Credit Act (s. 75).

Our investigator upheld this complaint. He noted that the supplier had confirmed receipt of the phone Mrs T had returned and said a refund would be provided. Mrs T hadn't received the refund and he thought there had been a breach of contract. Because of this he thought Mrs T's claim should be upheld under s. 75. He recommended that Mrs T be refunded the cost of phone (£1,099) and have her credit card reworked to reflect this. He also recommended she be paid £100 compensation.

NewDay didn't agree. It said that the supplier had only confirmed the refund on the account that related to the temporary credit from the chargeback claim (which was later reversed) rather than an actual refund. It said Mrs T hadn't provided evidence that she had contacted the supplier in May 2022, confirming that her chargeback had been challenged and the amount of £1,099 returned to the supplier, as was requested by its s.75 team. It said Mrs T hadn't made any attempts to resolve this issue with the supplier after the credit was reversed.

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.

Mrs T bought a phone and then decided to return it. She has provided evidence that the supplier accepted her return request and said that once the goods had been received a

refund would be processed. Mrs T has provided evidence of her returning the item on 6 September 2021 using the returns label and the supplier confirming receipt on the 9 September. Based on this I find that Mrs T returned the phone, and this was received by the supplier. So, I accept that and a refund was due.

Mrs T says as a refund hadn't been provided and she contacted NewDay to see if it could assist. NewDay recommended that she completed a disputed transaction form which she did. While I note the comments in NewDay's final response letter about Mrs T not providing evidence the refund had been agreed, I think that the information she provided from 6 October about the delay in the refund and this being looked into with '*the delay to be explained and the refund confirmed*' was reasonable evidence that the supplier accepted a refund was due. Had this not been sufficient I think that NewDay should have explained to Mrs T at that time what further evidence it needed to support her case.

I also note that the supplier defended the chargeback claim but the defence was about the item being supplied and as the claim was about the refund not being given I do not think this was a reasonable defence. So, while I can see NewDay went through the chargeback process as we would have expected, in regard to applying the temporary refund and contacting the supplier, I do not think the evidence from the supplier addressed the claim regarding the refund and I think this should have been considered further.

NewDay then said it could consider the issue under s.75. I do not find this unreasonable and agree that the claim can be considered under s.75. Under s.75 it is necessary for a breach of contract or misrepresentation to have taken place. In this case the question is about whether there has been a breach of contract.

NewDay says that Mrs T didn't provide the evidence it requested and because it didn't have enough evidence it didn't uphold her claim. I can see that NewDay asked Mrs T to provide evidence that she had contacted the supplier to explain the chargeback credit had been re-debited. I cannot see that this happened. However, in this case as the supplier's returns policy allowed the item to be returned and Mrs T received an email to say her return request had been accepted and including the label for the return to happen, I think that it should have been accepted that once the item had been received by the supplier the refund would be due. Mrs T has provided the evidence to show that the supplier received the item and that a refund was being processed but then this didn't materialise. Given this I think that there is enough to say that there was a breach of contract by the refund not being provided and so I uphold Mrs T's complaint.

Mrs T has been caused distress and inconvenience because of the issues with her refund. I think that NewDay should have identified sooner that the refund was due and hadn't been provided. Because of this I think it is reasonable it pays £100 to Mrs T for the trouble and upset she has been caused.

Putting things right

As I uphold this complaint, NewDay should:

- Refund Mrs T £1,099 (the cost of the returned phone) and rework the credit card balance as though the payment hadn't been made, refunding any charges and interest that wouldn't otherwise have been applied. And
- Pay Mrs T £100 for the inconvenience she has been caused through this process.

My final decision

My final decision is that I uphold this complaint. NewDay Ltd should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 3 January 2023.

Jane Archer
Ombudsman