

The complaint

Mrs N complains about how NewDay Ltd responded to a claim she made about a purchase on her credit card.

What happened

Mrs N bought tickets for a concert from a ticket agency ('the supplier') using her NewDay credit card. The concert was due to take place in August 2021 but due to the Covid-19 pandemic was postponed until June 2022.

Mrs N said she told the supplier she was unable to attend the rescheduled date and requested a refund. She said that despite emailing the supplier twice to ask for a refund she had no response from it. So she contacted NewDay for help.

NewDay said it raised a chargeback – but discontinued this as Mrs N had not evidenced that the supplier had agreed to refund her as required by the chargeback scheme rule. It also did not uphold a claim under Section 75 of the Consumer Credit Act 1974 because it considered the technical requirements for a valid claim were not met.

Mrs N was not happy with this and complained to NewDay but it would not change its stance. Mrs N took her complaint to this service.

Our investigator looked at the matter and upheld the case. In summary, he considered that NewDay caused Mrs N to lose out because it didn't pursue the chargeback using the reason code relating to a service which had not been provided. He also noted that NewDay had offered £100 for its customer service and said this seemed fair.

NewDay responded to disagree with the investigator. In summary, it says:

- It directed Mrs N to its online portal where she ticked the category relating to *refund not received* so it didn't raise the chargeback under the reason code for *service not provided*.
- Mrs N did not query how best to proceed with the chargeback – and there was support available for her to do so if she wished.
- The supplier offered Mrs N a credit-note and it isn't clear if she accepted this so even a claim under *service not provided* would not have succeeded.

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.

NewDay is not the supplier of concert tickets here so in considering what it should fairly do to resolve matters I consider its specific obligations as a provider of financial services. In that respect I consider the card protections of chargeback and Section 75 to be relevant here.

Due to my findings on chargeback below I do not consider it necessary to cover Section 75.

Chargeback

The chargeback scheme is one way which NewDay is able to attempt to recover funds for Mrs N. It is limited by the particular scheme rules that apply (in this case Mastercard) so in order to decide if NewDay has acted fairly I have considered the relevant chargeback scheme rules and additional scheme guidance published in light of the Covid-19 pandemic.

From what I understand NewDay did pursue a chargeback, but it did so under a reason code relating to a credit not being provided. Looking at the scheme rules here it is clear to me that in order for this chargeback to succeed there needs to be information showing that Mrs N had been promised a refund / was due one under the supplier's terms and conditions.

From what I can see Mrs N contacted NewDay in writing with sufficient time for it to raise a chargeback and understand that:

- Her concert booking was cancelled
- That she had been offered an alternative
- That she had refused said alternative and written to the supplier twice for a refund

There was no indication in this letter that she had been offered a refund by the supplier. Instead it offered her a change of date or credit note for the cancelled concert but she did not want to accept these, so she requested a refund. So I think it was reasonably clear to NewDay that a chargeback relating to a credit not provided would not have fit the circumstances here, and that the code for services not provided did.

I also note that Mastercard clarified in its own pandemic guidance that even if a supplier offers a reasonable alternative to a cancelled service – the consumer does not have to accept this and can still pursue a chargeback.

I understand that after Mrs N wrote to NewDay with details of her claim it chose to direct her to its online portal where she indicated she had not received a refund. So it raised a chargeback for a credit not processed. However, NewDay has the knowledge and expertise of the requirements of particular chargeback codes and in light of the information it had from Mrs N (including the email she attached from the supplier) it would have been clear to it that pursuing a credit not processed did not fit the circumstances here. And I don't think it is fair to put the onus on Mrs N for recognising this herself. In this context it would be clear to NewDay that Mrs N as a layperson was simply identifying that she wanted a refund and had not received one, as opposed to directing NewDay as to what particular chargeback reason it should use here.

I realise NewDay has indicated that Mrs N could have asked for help if she needed it – but I don't see why she would have reasonably done so here. She provided NewDay with sufficient information for it to carry out the chargeback under the appropriate reason code.

I also note NewDay has suggested that even a chargeback for a service not provided would likely have failed because it isn't clear if Mrs N accepted the alternative offered. But the evidence NewDay got from Mrs N was clear that she hadn't accepted the alternative. There is nothing persuasive to indicate she did – so I don't think this would be a reason for not raising a chargeback using this reason code. As an additional point here when considering what is fair and reasonable I also note that even the rescheduled event was cancelled as the supplier went into liquidation. So even if I accepted that Mrs N had accepted a reasonable

alternative (which I don't) she would have likely had the right to raise a chargeback for the supplier's failure to provide the alternative.

While it is not possible to say with certainty what would have occurred had NewDay raised a chargeback for services not provided (as I think it reasonably should have here) it does seem quite clear that Mrs N did not get the service she paid for and that a chargeback is more likely to have succeeded than not.

Thinking of what is fair and reasonable I consider that NewDay should refund Mrs N the cost of the tickets she paid for using her card.

I note that NewDay has offered Mrs N £100 compensation. But it appears this is largely in relation to delays after the complaint was referred to this service. The focus of this complaint is the way the claim was handled, and I don't think there were exceptional delays in dealing with the claim itself – although some of the communication could have been better. All things considered I still think it fair that NewDay pay the £100 it has offered– but in the circumstances I don't think it fair for me to also ask NewDay to pay Mrs N out of pocket interest on the refund for the tickets.

Putting things right

NewDay should refund Mrs N and pay her compensation as directed below.

My final decision

I uphold this complaint and direct NewDay Ltd to refund Mrs N the £247.50 she paid for the tickets. I also consider it fair, if it has not already done so – to also pay Mrs N the £100 compensation it has also offered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms N to accept or reject my decision before 5 March 2023.

Mark Lancod
Ombudsman