

The complaint

Miss F is unhappy how NewDay Ltd trading as Marbles (NewDay) handled her request for help to recover money following the cancellation of airline flights.

What happened

In February 2021 Miss F booked some flights, scheduled for mid-September 2021. She booked them through a booking agent, who I'll refer to as L, and paid £794.92 using her NewDay credit card.

In August 2021, Miss F has said she enquired about changing the flights to a date in 2022 due to the ongoing concerns caused by the Covid-19 pandemic and the restrictions imposed on airlines. She didn't go ahead with those changes, and she has said L told her the flights scheduled for mid-September 2021 would be cancelled because of the pandemic and she would be entitled to a full refund from them. However, when Miss F approached L for a refund, they didn't respond and ignored several requests from her for information.

Because of this Miss F got in touch with NewDay in August 2021. She sent them a dispute resolution form along with the evidence she felt supported her claim for her money back. This evidence included L's terms and conditions, which explained the process for a refund should flights be cancelled.

NewDay raised the chargeback with L and temporarily credited Miss F's account with the full amount while L considered things. L responded and defended the chargeback. NewDay accepted L's defence and told Miss F they would be re-debiting her account and couldn't take things any further for her.

Miss F complained to NewDay at this point. They responded and didn't uphold her complaint. They said that she hadn't provided any evidence to suggest she was entitled to a refund, and that would have been needed to enable them to represent the chargeback. They maintained they had acted appropriately by re-debiting her account. NewDay said they couldn't consider a claim under Section 75 (s75) of the Consumer Credit Act 1974 as the necessary relationship between Miss F and the airline wasn't in place.

Unhappy with this, Miss F brought her complaint to our service. Our investigator upheld it. He said he didn't think NewDay had acted appropriately by accepting L's defence without pursuing it further. He said both sides had provided the same evidence and it suggested that Miss F was entitled to a refund as she hadn't cancelled the flights. He said he thought NewDay should have represented the chargeback on that basis, and if they had it more than likely would have been successful. He asked NewDay to refund Miss F the full amount of £794.92. He also asked them to pay 8% simple interest on that amount from the date the chargeback was raised until the date of any settlement.

NewDay didn't accept this. They continued to say that Miss F hadn't provided evidence that a refund was due, so the chargeback couldn't have been taken any further under the chargeback code that had been used.

As NewDay didn't accept, 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 Miss F made to be refunded. Those circumstances can include where services aren't supplied.

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 in assisting its customer to recover their funds.

NewDay did raise a chargeback for Miss F when they received her dispute resolution form and supporting evidence. That is what I would expect them to do. However, L defended the chargeback and supplied supporting evidence of their own. At this point I think NewDay could have done more to determine if any further evidence could be supplied by Miss F to continue to support her claim. The defence provided by L and the initial information provided by Miss F were in direct contrast to each other. Miss F had said the flights had been cancelled, not by her, and L had said in their defence that Miss F had cancelled the flights.

NewDay have said that, if Miss F was entitled to a refund and had been told as such by L when she called them in August 2021, they're sure that L would have been happy to have confirmed that in writing to her as well. And because they haven't been provided with that, they were unable to continue to pursue the chargeback. But Miss F has said she tried to speak to L on numerous occasions about this without success. It seems L weren't prepared

to acknowledge Miss F's request. L have also confirmed in their defence to the chargeback that Miss F cancelled the flights, yet they have not provided any evidence of that. Their terms and conditions support the fact that Miss F is entitled to a refund if the flights are cancelled, as long as cancellation isn't requested by her. So, for NewDay to say L's defence was sufficient, I think evidence of the cancellation would have been a key piece of information to rely on. Without that, I think Miss F's chargeback claim would have had a more than reasonable chance of success.

When information is missing or incomplete, I must make my decision based on the balance of probabilities – that is what I think is most likely to have happened – and in this case I'm more persuaded by Miss F's testimony and evidence. I haven't been shown anything by NewDay to suggest the flights were cancelled by Miss F, rather than the airline, so it follows that I don't think NewDay acted reasonably by not continuing with the chargeback and by not asking Miss F for any additional comments or evidence to continue to support her claim. I don't think accepting L's defence as it was presented, was fair towards Miss F.

Within their communication to this service, NewDay have also said that Miss F needed to supply additional evidence to comply with the relevant chargeback code that NewDay had raised the claim against. This code was determined by NewDay based on what Miss F had entered onto her dispute resolution form – however, I think a couple of chargeback reasons could have been selected considering the facts of the claim, and I would expect NewDay to choose the one that best fit the criteria. Whilst I'm not sure they did that in this case, the chargeback code applied isn't material to my decision here that I don't think NewDay have acted reasonably towards Miss F.

As I'm satisfied NewDay should have pursued the chargeback claim with the information they'd received from L, and I think the claim had a more than reasonable chance of success, it follows that my decision is that NewDay should reimburse Miss F the total amount of £794.92. They should pay 8% simple interest on that amount from the date they re-debited Miss F's account following L's defence to the date of settlement.

I haven't commented on the s75 aspect within this decision, as I'm persuaded NewDay should have done more throughout the chargeback process.

My final decision

For the reasons above, I uphold this complaint. NewDay Ltd trading as Marbles must:

- Pay Miss F £794.92.
- Pay 8% simple interest on that amount from the date the chargeback claim was re-debited to the date of the settlement.*

*If NewDay Ltd trading as Marbles consider that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Miss F how much they've taken off. They should also give Miss F 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 Miss F to accept or reject my decision before 25 April 2023.

Kevin Parmenter
Ombudsman