

The complaint

Mr O complains that NewDay Ltd hasn't refunded the amount, he paid on his credit card for a faulty item.

What happened

In May 2021 Mr O used his credit card to order several items on an online marketplace, owned by a business (who I'll call A) the total transaction on his credit card was £745.73. One of these items was a game console ordered from a seller (who I'll call C), it cost £215.79. Mr O said the game console didn't work so he contacted C, who approved his refund.

Mr O returned the games console to C on 8 May 2021, but he didn't receive a refund. On 12 August 2021 Mr O contacted NewDay to request a refund under section 75 of the Consumer Credit Act 1974. NewDay said Mr O didn't have a valid section 75 claim because he purchased the console from C, but the credit card payment was made to A, so it didn't think the required debtor-creditor-supplier (DCS) agreement was in place. Unhappy with this outcome, Mr O complained to NewDay. It maintained its position and rejected his complaint.

Mr O brought his complaint to our service. Our investigator thought that even though Mr O hadn't requested a chargeback, NewDay should have raised one on his behalf. The investigator thought that if NewDay had done this, it was likely that the chargeback would have been successful. Because of this he didn't think it was necessary to consider whether Mr O's claim met the requirements for a section 75 claim. To put things right he said NewDay should refund Mr O the cost of the game console and rework his credit card account.

NewDay has not responded to the investigator's recommendation, so the complaint has been passed to me for a final decision.

When Mr O bought the games console, he also purchased a mobile phone which he returned and had difficulty getting a refund. He also asked NewDay to refund this transaction, but he has since confirmed the seller has refunded this item, so I will not be considering this transaction in this decision.

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.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to take it on board, but because I don't think I need to comment on it in order to reach the right outcome. And our rules allow me to do this. This reflects the nature of our service as a free and informal alternative to the courts.

Generally, where a consumer raises a dispute about a transaction made on a credit card, the card provider can consider the dispute under two guises- chargeback and section 75 claim.

Chargeback

Chargeback is a process by which disputes are resolved between the card issuer and merchant, under the relevant card scheme. The scheme isn't administered by NewDay, it's administered by Mastercard, and they set the rules.

NewDay says it didn't consider Mr O's dispute under the chargeback rules as he didn't specifically request this when he raised his dispute. It also says Mr O had the option to raise this via his online banking platform but didn't.

Whilst I accept Mr O didn't specifically request NewDay raise a chargeback, not all consumers are aware of this option. And whilst there is no obligation that requires NewDay to submit a chargeback, this service considers it good practice for card providers to do this where the right to make a chargeback claim exists under the applicable scheme rules – and if there is a reasonable prospect of success.

So, I've considered Mr O's dispute to see if I think a valid chargeback claim existed and whether I think the claim would have had a prospect of success. Under the relevant Mastercard scheme rules, Mr O had 120 days from the date of the transaction to raise a dispute. And I can see that Mr O got in touch with NewDay within this time-limit.

For a chargeback right to exist there must also be a valid reason code for the chargeback. I've looked at Mastercard's reason codes and I think NewDay could've considered his claim under the *credit not processed* code. One of the conditions under this code is that the merchant agreed to the refund but didn't provide it. And I can see that Mr O had confirmed to NewDay that he returned the game console but had not received a refund and had also provided evidence to confirm the return had been approved. In the circumstances, I think that Mr O did have a valid chargeback claim.

Mr O has provided a copy of the postal return receipt, which indicates the game console was returned to the seller on 8 May 2021. Based on what I've seen I think that if NewDay had raised a chargeback on Mr O's behalf it is likely that it would have succeeded, and Mr O would have had the transaction refunded. It is now clear that a chargeback is no longer available due to time limits. So, there is no opportunity to go down this avenue now. Because of this I think NewDay should now do something to put this right, and I've set this out below.

NewDay declined Mr O's section 75 claim, because it says section 75 of the CCA says a consumer can recover money from their credit card provider paid under a contract with a supplier - but only in very specific circumstances. That's when a payment is made under a 'debtor-creditor-supplier' agreement. It doesn't think this applies here because C supplied the game console to Mr O, but the credit card payment was made to a third party, A. However, I don't think I need to consider whether the requirements of section 75 are met here, because I'm already satisfied that it was unfair for NewDay not to raise a chargeback on Mr O's behalf.

Putting things right

I'm satisfied on balance that had NewDay pursued a chargeback on Mr O's behalf, it would have been successful, in the circumstances I think it was unfair that NewDay didn't raise a chargeback. So, it's my decision that NewDay should now refund Mr O £215.79 and rework his account as if this had been credited on 3 May 2021. And it should pay 8% simple interest

per year on any credit balances on his account between then and when it settles this complaint.

My final decision

For the reasons set out above, I uphold this complaint against NewDay Ltd and direct it to redress Mr O as I've described above.

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

Karen Dennis
Ombudsman