

The complaint

Mr A complains about the behaviour of NewDay Ltd trading as Marbles (“Marbles”) in relation to a chargeback and a claim he made under Section 75 of the Consumer Credit Act 1974 (“Section 75”).

What happened

Mr A used his Marbles credit card to pay for a holiday. Specifically he booked a stay in a holiday lodge with a hot tub. The holiday was provided by a third party supplier I will call “W”, but the booking was made via separate third party who I will call “H”.

Mr A was dissatisfied with both the lodge and the hot tub. The boiler in the lodge was broken so he had no hot water. Further he experienced excessive noise from outside the lodge. The hot tub did not work at all during his entire stay.

Mr A paid for four nights but stayed only two nights due to all of the problems. He had tried to make the best of it, he complained to the supplier at the time but got nowhere so decided to cut his holiday short and leave early.

Mr A complained to Marbles he thought it unfair he’d paid for nights he did not stay, so he wanted to be refunded for the two unused nights. Mr A asked Marbles to recover his money either through a process known as chargeback or via a claim against itself under section 75. Mr A indicated if it did not help him appropriately he might take the matter to court.

However, Marbles said it couldn’t assist with the chargeback, the chargeback process will only succeed if there is a valid chargeback reason under the chargeback rules. Marbles pointed out that the invoice did not set out what was meant to be provided in the detail required. Therefore it had nothing to show that there was a valid chargeback reason. Further, Marbles didn’t agree with Mr A’s claim against it under section 75.

Mr A complained about Marbles’ decision, but it declined to uphold his complaint. Dissatisfied with Marbles’ response Mr A complained to this service.

Once Mr A’s complaint was with us Marbles provided further detail about why it thought a chargeback would not have succeeded it said:

For Marbles “to proceed with such a claim, Mr A would be required to provide evidence of the advertisement stating that the Hot Tub would be warm at the arrival and there would be no external noise, which was not the case”.

Moreover, in any event Marbles suggested that it is not possible to raise a claim about the quality of goods or services via the chargeback rules.

One of our investigators looked into Mr A’s complaint. Our investigator, thought there was a valid chargeback reason code, namely ‘*Goods or Services Were Either Not as Described or Defective.*’ Our investigator pointed out the conditions for a successful claim under this code include that the consumer must have attempted to resolve the dispute with the merchant, the merchant refused to adjust the price accordingly or issue a credit and the service didn’t conform to its description. Our investigator thought all of these conditions had been met.

Further, our investigator was satisfied that the boiler did not work, there was no hot water and the hot tub did not work and therefore the chargeback reason code applied to this complaint.

In addition, our investigator pointed to an example under the chargeback reason code that talked about the quality of workmanship. Our investigator was satisfied since the rules themselves gave an example that involved a quality issue, the rules do cover quality issues with regards to goods and services.

In the circumstances, our investigator was persuaded that Marbles ought to have raised a chargeback. And our investigator was also persuaded that the chargeback would most likely have succeeded, had it been raised.

For all of these reasons, our investigator was satisfied it was fair and reasonable to require Marbles to put things right. To do this our investigator said Marbles should refund Mr A £194.50 plus 8% simple interest from 10 March 2022, the date the chargeback should have been raised, until the date the refund is made.

However, our investigator did not consider that Mr A's complaint qualified under Section 75, so she did not recommend upholding this part of the complaint.

Neither Mr A nor Marbles accepted our investigator's recommendation. Mr A asked for compensation for distress and inconvenience. Whereas Marbles did not agree that Mr A had provided sufficient evidence to show what Mr A was offered or what was advertised about the lodge and the hot tub when he made the booking. Therefore he could not show just because the heating was not working in the lodge and that the hot tub was not working at all, the requirements of the chargeback reason code had been met..

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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. Rather, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Chargeback

As Mr A paid for services using his credit card and wanted a refund, I've thought about whether Marbles dealt with his request fairly. The chargeback process is relevant in this case. This is a way in which payment settlement disputes are resolved between card issuers and merchants . They are dealt with under the relevant card scheme rules of the relevant card scheme operator.

In certain circumstances the process provides a way for Marbles to ask for a payment Mr A made to be refunded. Those circumstances include where services aren't supplied or are defective or aren't as described/misrepresented by the company Mr A paid. This service only expects a business to raise a chargeback if there is a reasonable prospect of success. Moreover, a chargeback doesn't guarantee a refund. The merchant's bank could have put forward a defence to any chargeback claim. If the chargeback is defended, Marbles could pursue the chargeback further and ultimately ask the card scheme provider to arbitrate on the outcome.

Moreover, the chargeback process is a voluntary one so Marbles was under no

obligation to carry one out. However, it is a tool which is available as a means of resolving disputes. There will be times where it is not only fair and reasonable to use it to support a customer, but to pursue it in a particularly robust way, as dictated by the very individual circumstances of the case.

I'm satisfied here that the chargeback reason code "*Goods or Services Were Either Not as Described or Defective*" is relevant here. Initially, Marbles raised a number of reasons for disagreeing but its only remaining objection now appears to be that Mr A did not demonstrate what was offered/advertised when he made the booking, was not what he got. However, just in case I am mistaken about Marbles' current stance I'll look all of the objections it raised throughout this complaint.

I think it is implicit in the booking that Mr A made that the boiler would be working, that hot water would be available and that the hot tub would work, in other words I don't think that this had to be explicitly stated either in the advert or in the invoice provided to Mr A. As far as I can see, Marbles does not dispute that the boiler was not working, that there was no hot water or that the hot tub did not work. So on the face of it the goods or services were either not as described or defective.

Mr A's complaint is not that he was told or promised that the hot tub would be warm on arrival, so I don't need to look any further at this point. Moreover, I think the chargeback would have succeeded on the boiler, hot water and hot tub points raised above so I don't think I need to look any further at the excessive noise issue either.

Marbles has not commented directly on the fact that the scheme operator's rules suggest that a complaint about the quality of workmanship could succeed under this chargeback reason code. And therefore it is fair and reasonable to infer that a complaint about the quality of services and or goods as here could also succeed. I take it therefore it concedes the point. In the circumstances, in any event, I'm persuaded that there is no bar in the chargeback rules to the type of complaint that Mr A is bringing, quite the opposite.

In all of the circumstances, I am persuaded that Marbles made a mistake in not raising a chargeback because Mr A had done enough to satisfy the requirements of the relevant chargeback reason code. Therefore on balance Marbles had sufficient information to raise the chargeback. And on balance, I'm also persuaded that if the chargeback had been made it would have succeeded. Therefore it follows that it is fair and reasonable that Marbles must take steps to put things right. What it must do is refund the amount that Mr A paid for two nights stay which he did not use.

Mr A has asked for compensation for distress and inconvenience. However, while I think Marbles did make a mistake in not carrying out the chargeback I don't agree that the manner in which it went about coming to its decision means it caused Mr A avoidable distress and inconvenience. I therefore don't agree I've any fair or reasonable grounds for saying Marbles must compensate Mr A for distress and inconvenience.

Section 75

Mr A also asked Marbles to look at a complaint against itself under section 75. By reason of the type of credit that Mr A used to make his purchase, he potentially has the benefit of section 75.

Moreover the general effect of section 75 is that if Mr A has a claim for misrepresentation or breach of contract against the supplier he can also bring a like claim against Marbles provided certain conditions are met.

One of these conditions is that there must be relevant debtor-creditor-supplier arrangement in place. What that means here is that Mr A needs to be the debtor, Marbles the creditor and W the supplier. But that is not what we have got here. This is because H is the supplier in this particular context because the payment under the credit

card was made to it, not to W. Albeit that H then passed the money on to W. And there is nothing about the payment arrangements between H and W that leads me to say, in this instance, there was the required debtor-creditor-supplier arrangement in place. Therefore, I have no fair or reasonable basis for saying Marbles must take responsibility here for this reason. It follows I don't uphold this part of Mr A's complaint.

My final decision

My final decision is that NewDay Ltd trading as Marbles must:

If Mr A has already paid off the part of his credit card bill that relates to the two nights he paid for but did not use then it must compensate Mr A for the part of the holiday which he did not use that is the pro rata cost of the two nights that Mr A paid for but did not use. It appears that this is £194.50 It must add interest to the refund at the rate of 8% simple per year the interest to run from 10 March 2022, the date the chargeback should have been raised, until the date of settlement.

If Mr A has not already paid off the part of his credit card bill that relates to the two nights he paid for but did not use, then NewDay Ltd trading as Marbles must rework Mr A's account as if he never made the payment.

NewDay Ltd trading as Marbles must pay the total compensation or rework Mr A's account within 28 days of the date on which Mr A accepts my final decision.

If it considers it is legally required to deduct income tax from the interest mentioned above, it must send a tax deduction certificate with the payment so that Mr A can reclaim the tax if he is able to.

Mr A should refer back to NewDay Ltd trading as Marbles if he is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 29 March 2023.

Joyce Gordon
Ombudsman