

## **The complaint**

Mr T has complained about how NewDay Ltd handled his request for money back.

## **What happened**

Mr T says he made an online purchase of merchandise for £683.10 using his NewDay credit card on 5 July 2022. He tells us he reached what felt like a stalemate with the merchant after exercising his right to cancel, and so contacted NewDay for help and to raise a dispute. As the purchase had been made at a distance, he referred to a 14-day cooling off period. But he was getting frustrated because he didn't think NewDay properly understood what was wrong or what it could do to help. Mr T made various calls to NewDay between 5 and 7 July 2022. He complained about the support it gave him.

NewDay sent a final response letter for Mr T's complaint in August 2022. It acknowledged Mr T contacted it to raise a 'distance dispute' but that the call handler asked for more information because they weren't aware of a distance dispute under the card scheme chargeback rules. NewDay says Mr T was unwilling to provide further information so the call handler couldn't raise the dispute.

NewDay said it listened to the calls and thought the call handlers were polite and professional throughout and that they gave Mr T the correct information or asked for more details when appropriate. NewDay acknowledge Mr T spoke to another call handler who said they were aware of the 14-day cooling off period, but that Mr T would need to raise the dispute with the merchant first. The merchant, however, refunded Mr T the funds on 15 July 2022. NewDay gave Mr T details of how he could raise a chargeback in the future, and it apologised he felt the need to complain. But it didn't think it handled things unfairly.

Mr T referred his complaint to the Financial Ombudsman. He said he found it alarming NewDay didn't know about distance disputes. He thought NewDay ought to have given him more help and not simply sign-post him back to the merchant. Mr T said he was anxious NewDay weren't going to help him and that he could have lost out financially. To resolve things, Mr T requests an apology. And that he should also be awarded damages for the distress and inconvenience caused.

Our investigator looked into things but didn't make any recommendations. He said he didn't think NewDay handled the chargeback claim unfairly. He said Mr T was directed back to the merchant and that he was able to obtain a refund. So, no recommendations were made.

Mr T didn't agree with the assessment. He says he contacted NewDay to make a claim under section 75 of the Consumer Credit Act 1974 (CCA) and in particular for NewDay to enter into a joint action with him regarding it as a means of recourse. Mr T says it was his decision not NewDay or the Financial Ombudsman to decide which avenue should be used to recover funds. And that while he'd recovered the loss, it had been distressing and time consuming.

## **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 want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide the complaint quickly and with minimum formality. I want to assure Mr T and NewDay that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

I'm considering whether NewDay has acted fairly and reasonably in the way it handled Mr T's request for getting his money back. I have to think about the specific card protections that are available. In situations like this, NewDay can consider raising a chargeback or assessing a claim under section 75.

Mr T said he wanted NewDay to enter into a joint action with him. Section 75 is a statutory protection that enables Mr T to make a like claim against NewDay for breach of contract or misrepresentation by a supplier paid by credit card in respect of an agreement it had with him for the provision of goods or services. But there are certain conditions that need to be met in order for section 75 to apply.

Chargeback isn't a legal right or a guaranteed way of getting a refund. The rules are set out by the particular card scheme. There wasn't a requirement for NewDay to raise a chargeback, but if there was a reasonable prospect of success, I'd consider it good practice for it to have done so.

I think part of the issue Mr T had when he spoke to NewDay was that he'd only just made the purchase. And he'd only just asked to cancel it. The distance selling rules that form part of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCR) do provide for a 14-day cancellation period. And the merchant may have breached the contract by failing to honour that. But by the time Mr T spoke to NewDay he'd only just made the purchase and so there was no breach of contract at that point that NewDay would have been jointly liable for under section 75. NewDay didn't necessarily need to enter into a joint action. It's jointly liable with the merchant for breach of contract and misrepresentation. Moreover, I can't see there would have been a valid chargeback reason code at that point that would've had a reasonable prospect of success.

However, that being said, from reviewing what happened on the phone calls, I think Mr T's complaint is primarily about the service he received from NewDay and the way it handled his prospective claim. He managed to receive a refund from the merchant. So, I don't need to direct NewDay to do anything in relation to that.

I've listened to the calls between Mr T and NewDay. It looks like the relationship broke down straight away. Mr T couldn't hear the first caller properly. So, he wanted to speak to someone else. I've listened to that call, and I can understand the agent. So perhaps Mr T had a poor line. He made further calls to NewDay and was unhappy with how he was being dealt with. So, he spoke to an agent in the complaints department.

Mr T's complaints primarily related to:

- The way the agents spoke to him
- Agents speaking over him
- Agents not understanding distant purchasing

- Agents being incapable to do their job
- Being hung up on
- Not being passed through to another staff member

Overall, I think the agents were trying to help Mr T. I appreciate Mr T was getting frustrated the agents wanted to put him on hold, but I don't think that's a particularly unusual step for an organisation to take when the agent needs support from someone else. The relationship broke down further when Mr T spoke to an agent in the disputes area. She didn't understand the term distance purchase. So, she asked Mr T for more details about the dispute. But he was unhappy to do that because he thought she didn't know how to do her job. The agent said distance purchase wasn't a term used in the department. But that she was more than happy to talk about the dispute. Mr T wanted to speak to another agent and was unhappy with how she was dealing with it.

I can understand why Mr T was frustrated the agent didn't understand his terminology. Given she worked in disputes she ought to have had some knowledge of certain transactions made where the customer hasn't seen the product. But I'm conscious she repeatedly asked Mr T to explain more about the dispute so she could try to help. Mr T was frustrated she wouldn't pass him through to someone else, but it seems that she wasn't able to. Mr T demanded to speak to a senior manager, but she wasn't able to pass him through to directly. So, she offered to arrange a call back, which I don't think is unreasonable. Mr T didn't want to clarify his mobile number, so the agent said she'd have to end the call, which she did. I appreciate Mr T had already made a few calls by this point, and he'd not resolved things. But if he'd given more details to the agent or clarified his contact number, he might've been given the help or information he needed. Or he might've been called back by a manager.

Overall, because the transaction was so recent, NewDay didn't have many options to help at the time he phoned. But I agree NewDay had the opportunity to provide clearer information about on how best to deal with the dispute. If it meant, for example, he had to wait until the 14 days were up to see if he'd received an answer from the merchant, that's what he should have been told. However, I think the call handlers were trying to help Mr T on the whole and were courteous.

As I said above, we're here to resolve complaints quickly and with minimum formality. Mr T has received a refund for the transaction he made which resolves that part of his dispute. While I know it'll disappoint Mr T, I'm not going to direct NewDay to pay compensation for the way it handled the calls. It apologised that Mr T felt the need to complaint. I don't think the way it dealt with Mr T warrants further compensation.

### **My final decision**

My final decision is that NewDay Ltd has done enough to resolve things for Mr T. I make no further directions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 12 June 2023.

Simon Wingfield  
**Ombudsman**