

## The complaint

Mr B has complained that NewDay Ltd trading as Aqua won't reimburse him money he paid for goods he says weren't received.

## What happened

Mr B paid £171.20 to an online merchant in October 2022 using his Aqua credit card. He disputed the transaction with Aqua the following day because he says the goods weren't received. A chargeback was initiated.

Aqua raised the dispute by chargeback a few days later for 'goods or services not received' and it credited Mr B's card with £171.20 while the dispute was considered. The merchant challenged the chargeback within 45 days. It sent a picture of someone accepting a package from the courier. Aqua says due to a backlog it wasn't until 11 January 2023 that it debited Mr B's account and emailed him the decision.

Mr B complained and said he wanted Aqua to pursue the chargeback further through what's known as pre-arbitration. He also requested Aqua refund the associated interest. Aqua apologised for the trouble and upset and credited Mr B £35 in compensation. But it said the merchant's evidence showing proof of delivery was compelling, so it didn't think it ought to have pursued the chargeback further.

Unhappy with the response, Mr B brought his complaint to the Financial Ombudsman. He said Aqua should have gone to pre-arbitration. He said he had further evidence that disputes the goods arrived.

Our investigator asked Mr B to supply further evidence. She didn't receive a response, and she sent an assessment saying she thought Aqua had done enough to resolve the complaint. She didn't make further recommendations.

Mr B then supplied a colour copy of the courier's proof of delivery and pictures of the front of his house. He reiterated the doors were a different colour. Our investigator didn't think the photos were very clear. I issued a provisional decision that said:

*I'm considering whether Aqua has acted fairly and reasonably in the way it handled Mr B's request for getting his money back. In situations like this, Aqua can consider raising a chargeback or assessing a claim under section 75.*

*I've not thought about section 75 because the items Mr B bought do not fall within the relevant financial limits for a section 75 claim to be considered.*

*The chargeback process provides a way for a card issuer to ask for a payment to be refunded in certain circumstances. The chargeback process is subject to rules made by the relevant card scheme. It's not a guaranteed way of getting money back.*

*While it's good practice for a card issuer to attempt to chargeback where certain conditions are met and there's some prospect of success, there are grounds or dispute conditions set*

*by the relevant card scheme that need to be considered. If these are not met, a chargeback is unlikely to succeed. And something going wrong with a merchant won't always lead to a successful claim.*

*Aqua raised the chargeback but it was defended by the merchant. Mr B wanted it pursued further but Aqua thought the merchant's evidence was compelling. When I reviewed Aqua's evidence I also thought it gave a good indication the parcel was delivered to Mr B. But the photographic evidence Aqua submitted was in black and white. Mr B has now supplied a colour copy of the courier's proof of delivery. And he's also shown us a photo of his front door, so I've been able to compare the two photos.*

*Mr B explains he lives on an estate with new build properties. The houses look very similar. Having compared the courier's photo to a photo of the front of Mr B's house, the brickwork around the door; the frame; architrave and the entryway to the front door do look the same. But I'm concerned the door does look a different colour. Mr B's door is a very light green. From a distance it could almost look cream coloured. While I appreciate the clarity of the courier's photo isn't great. It looks more like a dark blue or almost black colour. So I'm not convinced the courier's photo does enough to demonstrate the goods were likely delivered to Mr B.*

*I'm conscious the merchant challenged the chargeback on 29 November 2022, but it wasn't until 11 January 2023 Aqua told Mr B it was holding him liable because of that evidence. It only had until 13 January 2023 to consider taking the dispute to pre-arbitration. It didn't do that because it thought the merchant's evidence was compelling. But if it had asked Mr B sooner to supply evidence or a counterargument, I think it would have seen there was enough doubt in the merchant's evidence that proceeding to pre-arbitration would have been the right thing to do. Mr B spoke to Aqua on the 11 and 12 January 2023, but he wasn't given an opportunity to put forward his case in time. There were service failings from Aqua at this point as well which is why it paid Mr B £35.*

*I put Mr B's evidence to Aqua to ask what it would have done, but we've not had a substantive response as yet. So I've thought about what a fair outcome would be. I think Aqua should have given Mr B enough of an opportunity to fully respond to the merchant's evidence. Had it done so I think there'd have been grounds for it to pursue the chargeback further. Seeing as though the door in the courier's photo looks like a different colour to Mr B's door, I think there'd have been a reasonable prospect of success for the chargeback.*

*Therefore, to resolve things, I'm intending to direct Aqua to rework Mr B's account as if the payment for the goods had not been re-debited. Based on the evidence, I think this is a fair outcome in all the circumstances.*

Mr B accepted the provisional decision and said as his account is now closed, he would like the refund paid direct.

Aqua didn't accept the provisional decision. It says the colour picture supplied by Mr B is clouded by the light level. Aqua increased the light level on the picture and said it shows the door, frame and frame of the window within the door closely match.

### **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 thank the parties for their responses. It's not a straight-forward case and I'm not a professional photo editor. But I have to base my decision on what I think is fair and

reasonable. And where the evidence is inconclusive, I base that decision on the balance of probabilities.

I can see that by increasing the light level on the picture it's easier to see contrast. But I'm mindful that when looking at photos of the front of the house, the door frame that is facing out of the house is very dark and almost black. It's completely different to the colour of the door – which is closer to white. And in Aqua's lightened photo from the courier the outward facing door frame that's almost black looks very similar to the colour of the door – whereas Mr B's door is closer to white. So, while not 100% conclusive, on balance, I'm not persuaded the lightened photo has done enough to make me change my mind. I've not seen enough to show the courier's delivery photo is of Mr B's door. Mr B raised his claim straight away and has consistently said he's not received the goods. So, on balance, I'm not going to depart from the conclusions I reached in my provisional decision – for the reasons given above.

### **My final decision**

My final decision is that I uphold this complaint and direct NewDay Ltd trading as Aqua to rework Mr B's account as if the payment of £171.20 had not been debited on 11 January 2023. If that puts the account into credit, it should pay 8% simple annual interest on that amount from the date the account went into credit to the date of settlement. I understand the account is now closed so, if needed, NewDay Ltd trading as Aqua should reimburse Mr B directly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 23 June 2023.

Simon Wingfield

**Ombudsman**