

The complaint

Mr A complains that NewDay Ltd declined his chargeback claim and recorded adverse information on his credit file when the re-debiting of the disputed amount caused his account to go over his credit limit.

What happened

In November 2022 Mr A bought some headphones online and paid about £230 for them with his NewDay Aqua credit card. He says that when they arrived they were damaged, so he contacted the seller and asked to send them back for a refund. The seller agreed to that, but said that they could only accept the return of the item using a particular courier. Mr A did not agree to that, because the courier was at least three quarters of an hour away, and also because he had previously been dissatisfied with their service, and had sued them in court and won.

The seller insisted that there was no other way for Mr A to return the item, and Mr A would not back down. Mr A asked NewDay for a refund under the chargeback scheme. NewDay did that, and temporarily credited the payment to Mr A's account while the claim was open. But the chargeback was unsuccessful because the headphones had not been returned, and so NewDay re-debited the payment from Mr A's account. This resulted in the account balance exceeding the credit limit, and charges and interest were applied over the following three months.

Mr A complained, and NewDay refunded £24 of charges and about £35 of interest as a gesture of good will. But it did not uphold his complaint. It said that it had to follow the rules of the chargeback scheme, and the chargeback had failed because the rules required the purchased goods to be returned, and they had not been. Being dissatisfied with that response, Mr A brought this complaint to our service. He also complained about the seller's poor customer service.

Our investigator did not uphold this complaint. He explained that he could not consider any complaint about the seller or about the courier service, he only had power to consider a complaint about what NewDay had done. He said that the chargeback had been doomed to fail because the headphones had not been returned. He also considered whether NewDay might be liable under section 75 of the Consumer Credit Act 1974 for a breach of contract by the seller. But he concluded that the seller had followed its terms and conditions and that no breach of contract had occurred. And he said that the adverse data NewDay had reported to the credit reference agencies was accurate. Mr A did not accept that opinion, and he asked for an ombudsman's 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.

Having done so, I do not accept it, for broadly the same reasons as those my colleague gave.

When Mr A asked NewDay for a refund, NewDay did exactly what it was supposed to do. It promptly raised a chargeback dispute, on the sixth day following the purchase. It recredited Mr A's account with the disputed amount, and warned him that this would be re-debited if the chargeback was unsuccessful. Of course it was unsuccessful, because the chargeback rules say that a purchase of damaged or defective goods can only be refunded if the goods are returned, and they were not. There is no chargeback reason which applies for insisting that the goods are returned in a particular way. So NewDay had no choice but to accept the seller's defence to the dispute, and to re-debit the money from Mr A's account. Again, it warned him that this was going to happen.

It is unfortunate that the re-debit took Mr A's account balance over the limit, but it was his responsibility to make sure that the limit was not exceeded. Therefore the fees and interest were properly charged. That point is almost moot, because NewDay refunded them as a gesture of good will. But it remains the case that the relevant data recorded on Mr A's credit file is still accurate, and so I cannot tell NewDay to remove it.

I have also considered NewDay's liability under section 75. The seller was in breach of its contract with Mr A if it sold him defective goods. But I think that allowing him to reject and return the goods for a full refund is a fair remedy for that. And there was no breach of contract in the seller insisting that the goods be returned in accordance with its returns policy, which formed part of the terms and conditions of that contract.

So for all of these reasons, I am satisfied that NewDay has done nothing wrong.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 15 August 2023. But this decision brings our involvement in this matter to an end, and so we will not comment about it any further.

Richard Wood
Ombudsman