

## **The complaint**

Mrs J says NewDay Limited has treated her unfairly in relation to a transaction on her credit card which paid for a package holiday.

## **What happened**

In October 2021 Mrs J used her NewDay credit card to pay for a package holiday for her family which was due to take place in December 2021. Mrs J says she chose the package holiday company, which I'll call 'Firm T', because it advertised that it was providing Covid insurance as part of the sale of the holiday, so that Mrs J felt that if she couldn't go because of Covid she'd get her money back. Mrs J says that just before her flights were due to fly, she and her family all got Covid. So she sent proof of her Covid status to Firm T, but she says it didn't refund her. So she complained to NewDay.

NewDay considered Mrs J's dispute with Firm T and raised a Chargeback. Firm T responded by saying it didn't provide the insurance, but another company, which I'll call 'Firm C', did. And Firm T added it could see that Mrs J had made a claim on the insurance in place with Firm C. So it didn't think it needed to do anymore as Firm C was dealing with it. Mrs J, unhappy with this, brought her complaint to this service. Our Investigator issued assessments saying NewDay had nothing more to do. Mrs J thinks this is unfair, so this complaint came to me to decide.

In April I issued my provisional decision. Both parties have had opportunity to respond to it, and the timeframe for such responses has now ended.

## **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.

In response to my provisional decision NewDay said it didn't have anything further to add. This service has received no response from Mrs J within the time span set out in my provisional decision. More than a week has passed since that deadline passed and so I'm satisfied that it is now safe to go ahead and issue this final decision.

As neither party has provided evidence or reasoning to change my position I see no persuasive reason to divert from the position set out in my provisional decision. Accordingly Mrs J's complaint is unsuccessful for the following reasons (as described in my provisional decision issued previously).

Mrs J used her NewDay credit card to pay Firm T for the package. This means NewDay has certain responsibilities to Mrs J (if certain criteria are met) which arise from the relevant law, specifically, Section 75 of the Consumer Credit Act 1974 ('the CCA'). NewDay is also a member of a card network which provides card services. And this network has rules which includes giving NewDay an avenue for card transactions to be disputed with Merchants (such as Firm T), namely through the Chargeback process.

I should also add that this decision is solely about NewDay and whether it did what it should have when considering Mrs J's dispute with Firm T, and whether it treated Mrs J fairly. This decision isn't about Firm T or Firm C, neither of which are within this service's remit for complaints regarding Chargeback and S75. I hope this key distinction is clear.

*could NewDay challenge the transaction through a Chargeback?*

In certain circumstances, when a cardholder has a dispute about a transaction, as Mrs J does here, NewDay (as the card issuer) can attempt to go through the Chargeback process. This isn't a right for consumers and firms aren't obliged to raise a chargeback. However this service does think its good practice for firms to raise a chargeback when it feels a chargeback has a reasonable prospect of success.

Mrs J doesn't dispute that she used her NewDay credit card here. Nor does she dispute the amount, date, or any other details about the financial transaction itself. So I don't think NewDay could've challenged the payment on the basis Mrs J didn't properly authorise the transaction, given what I've just set out.

NewDay considered the matter and credited Mrs J whilst it did so. It then considered the matter and having done so re-debited Mrs J's account when it decided to not take the Chargeback any further.

NewDay says that it chose to no longer pursue the chargeback, because Firm T told it that Mrs J had confirmed that she'd raised a claim with Firm C regarding the insurance she'd bought when buying the package. I can see within the insurance advertising supplied, the presence and role of Firm C is described and that it is clear it is an insurance policy. So it is clear from the advert that Firm T isn't responsible for the insurance provision and implicitly neither is it responsible the consideration of claims regarding the insurance.

I've considered the chargeback reason codes available in this situation considering the position of the parties. I'm not persuaded that under this chargeback scheme there are any such codes which apply here and would have been successful if this matter had been proceeded with under those codes to the final stage of the process. So I don't think Mrs J lost out due to what NewDay did. I think the chargeback would have been unsuccessful in any event.

## *Section 75*

Under Section 75 of the Consumer Credit Act 1974 Debtors such as Mrs J can bring a 'like claim' against Creditors (such as NewDay here) for breach of contract or misrepresentation by Suppliers as long as certain criteria are met.

I'm satisfied the financial limits criteria here is met in this case considering the amount paid. The next test I have to consider is whether the appropriate Debtor-Creditor-Supplier agreement is in place which makes NewDay potentially liable.

It is clear to me from what Mrs J has said throughout this matter that her complaint is in essence in two parts 1) that she says she only bought the package holiday because of the insurance and 2) that she's unhappy that the insurance company Firm C hasn't paid out on her claim to it.

S75 of the CCA says:

*"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in*

*respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.”*

And Section 12 (b) says:

*“a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier,”*

And Section 11 (1) (b) says:

*“to finance a transaction between the debtor and a person (the “supplier”) other than the creditor,”*

So, although there are some important exceptions, in essence there needs to be a three-party arrangement in place for Mrs J to hold NewDay responsible for what Firm T did. So it follows that for the complaint regarding the advertising Firm T issued in relation to the package there are three parties-the Debtor (Mrs J), the Creditor (NewDay) and the Supplier (Firm T). So in regard to that element of the complaint I am satisfied that the DCS agreement is in place. So I can consider whether NewDay correctly considered Mrs J's S75 claim to it.

However in relation to Mrs J's complaint about the insurer Firm C not paying her claim I cannot hold NewDay responsible for that. That is because the issue complained about is Firm C not paying out on the claim, but Mrs J paid Firm T. And I've seen no persuasive evidence of any pre-existing arrangement being in place between NewDay and Firm C prior to this transaction. And thus there are four parties here-Debtor (Mrs J), the Creditor (NewDay) and the recipient of the funds (Firm T) and the Insurance provider (Firm C). So I'm not persuaded that NewDay can be held responsible for Firm C not paying out on Mrs J's insurance claim. So if Mrs J wishes to complain about Firm C she needs to complain to it first and then this service could consider whether it can look at the matter.

*Did Firm T breach or misrepresent the agreement?*

Clearly Firm T arranged the package holiday for Mrs J and assisted Firm C in the arrangement of the insurance. So I'm satisfied that Firm T didn't breach the contract or not honour the agreement made as it did what it said it would.

Mrs J says she only bought the holiday because of the insurance. And considering when Mrs J bought it (in the midst of Covid) I can see why she'd want some cover in place for such an eventuality. But it is clear Firm T did pass on the details of the required insurance to Firm C. It is also clear from the terms and conditions that Mrs J agreed when making the booking that *'The suppliers whose services make up your arrangements make those supplies in accordance with their own terms and conditions'*.

I've considered the Package Travel Regulations (the 'PTR's) and I'm not persuaded Insurance such as there is here is covered by the PTRs as it isn't defined as being so in the four types of 'Travel Services' as defined in the PTRs. So I don't think Firm T can be held liable for what Firm C did or didn't do.

I've also considered the advertising related to this insurance. There is no mention in that advertising that says payment on claims is guaranteed. Nor is there anything I can see which is in the advert which has shown to be untrue. It is clear that the Insurance was arranged and hence there would have been cover in place. The fact that Firm C hasn't so far paid out on the claim (or rejected the claim for an exclusion or other reason) doesn't mean the cover wasn't arranged or in place.

For Firm T to be held liable, and thus NewDay as well then it would need to be shown something in that advert wasn't true and Mrs J relied upon it to her loss. But it seems clear that the insurance was provided, and I'm not persuaded there was anything untrue which has led to loss here.

### *Summary*

So all in all having considered the matter carefully I'm not persuaded NewDay needs to do any more here. I think its approach to Chargeback was fair and although I think its approach to Section 75 isn't in line with how I see the matter, I don't think Mrs J lost out because of this. I'm satisfied the required relationship isn't in place (DCS) for the insurance claim and I'm not persuaded that the advertising was untrue bearing in mind Mrs J's agreement to be bound by Firm C's terms and conditions. So it is my decision that this complaint shouldn't succeed.

### **My final decision**

For the reasons set out above, I do not uphold the complaint against NewDay limited. It has nothing further to do on this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 28 June 2023.

Rod Glyn-Thomas  
**Ombudsman**