

The complaint

Mr K complains that NewDay Limited won't compensate him for a damaged suitcase.

What happened

In May 2022 Mr K used his NewDay credit card to pay just over £110 for flight tickets purchased from travel company. Mr K travelled and when he received his suitcase at the destination he discovered that his suitcase had been damaged. The airport desk acknowledged there was damage to his suitcase. Mr K contacted the travel company who offered him either a £50 credit or asked him to provide an independent report about the damage. Mr K complained about this but didn't get anywhere with the travel company. So he complained to NewDay.

NewDay looked into the matter and raised a chargeback with the travel company. The travel company responded and NewDay considered the travel company's defence and decided the chargeback no longer had a reasonable prospect of success. It also considered Section 75 of the Consumer Credit Act 1974 (the CCA) and concluded that as Mr K hadn't got the independent report about the damage as required in the agreed terms and conditions it didn't have to do anything further.

Mr K didn't think this was fair, so he brought his complaint to our service. Our investigator looked into the matter. Overall, he didn't think NewDay had acted unfairly by declining Mr K's request for compensation for the damaged suitcase. Mr K didn't agree. So the complaint has been passed to me to decide.

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 should make very clear that this decision is not about the travel company, which isn't a financial services provider and doesn't fall within my remit regarding chargeback or Section 75. Whatever the issues there maybe with the travel company and just because Mr K says he has lost out due to his damaged suitcase, it doesn't necessarily follow that NewDay has treated Mr K unfairly or that it should refund him. And this decision is solely about how NewDay treated Mr K. I hope this point is sufficiently clear.

There's no dispute that Mr K used his NewDay card to purchase the flight tickets which included the facility of checked in luggage. So I'm satisfied this transaction was appropriately charged to Mr K's account with NewDay.

could NewDay challenge the transaction through a chargeback?

In certain circumstances, when a cardholder has a dispute regarding a transaction, as Mr K does here, NewDay (as the card issuer) can attempt to go through a chargeback process. I don't think NewDay could've challenged the payment on the basis Mr K didn't properly authorise the transaction, given the conclusion on this issue that I've already set out.

NewDay is required to consider whether there is a reasonable prospect of success when it is considering whether to go through the chargeback process or not. If it does go through the process, then it must do so properly. And if NewDay takes the chargeback as far as it can then the scheme provider (not NewDay) will then make an independent determination on the matter. So NewDay isn't solely responsible for the decision whether to refund or not, when going through the chargeback process. And it can fairly decide to not proceed at any stage if it doesn't think there is a reasonable prospect of success.

Here NewDay did raise a chargeback and the travel company responded. The test here is did NewDay fairly consider the travel company's response when considering whether to continue with the chargeback. In the response to the chargeback the travel company has provided evidence showing that Mr K took the flight and the flight operated as planned. It also points to its request to Mr K to provide an independent report and its offer of a £50 credit to him.

Chargeback is simple way of disputing transactions operated by the card scheme and not NewDay. It operates through standardised reason codes for disputes around transactions such as being double charged, refunds not being processed or goods and services not as described. Here Mr K is disputing damage to the wheel of his suitcase which he has evidenced through photographs. However Chargeback doesn't cover such situations and there are no reason codes applicable here or relating to consequential losses. So I don't think NewDay treated Mr K unfairly here by deciding based on the evidence provided by the travel company that Mr K's chargeback didn't have a reasonable prospect of success.

Section 75

There are some requirements set out in the CCA which have to be met before deciding whether there was a breach of contract or misrepresentation by the travel company. I've considered the required relationship as set out in Section 75 and consider that it is met here for the provision of flights. The CCA also requires the single cash price item be over £100 and less than £30,000 and I'm satisfied Mr K can make a Section 75 claim here.

Once these requirements are met then Mr K can hold NewDay to a 'like claim' as to that he'd have with the travel company through legal means, for example if he was to take the travel company to the courts. And similarly to such court processes the onus is on Mr K to show that there has been a breach of contract or material misrepresentation as it would be him bringing such a claim.

The travel company's terms and conditions which Mr K agreed to when booking the tickets required Mr K, envisages such events as damaged luggage, and addresses this in the contract agreed. It says in the event of damage to his luggage, passengers such as Mr K are to organise the repair of the luggage and provide the receipts of such repairs to the travel company. In the event of the damage being beyond repair then an independent report of the damage including details of the value and brand of the items was required under these terms. These are the terms Mr K agreed to when purchasing the flights, and that he agreed to them is important here.

Mr K hasn't conformed to this requirement of the contract in terms of getting the suitcase repaired or independently inspected as agreed in the contract. He has pointed to the airport desk acknowledgement of the damage and said that the travel company and hence NewDay should compensate him. However NewDay has pointed to his non-conformance with the terms of the contract and noted that the travel company made an offer of £50 voucher and explained if he didn't want that he could put forward an independent inspection to ascertain the cost of repairs or replacement.

It is clear that Mr K has evidenced the damage with photographs and the airports documentation on the matter. But that is not contended here.

NewDay is entitled to rely on the same defences as the travel company would in such a 'like claim'. And here it has pointed to the voucher and how to take the matter forward under the agreed contract. But Mr K hasn't done this. Accordingly I'm not persuaded NewDay has treated him unfairly or caused Mr K any loss. If Mr K submits such a report now to the travel company then I'm sure it would consider it. And if Mr K has disposed of the damage luggage and such a report is now impossible, NewDay isn't responsible for the decision to make that disposal.

For the sake of completeness I'll deal with some of Mr K's other arguments. Mr K said the travel company is forcing him to use their services by offering a voucher. This isn't the case. It offered a voucher or the choice of getting a report. Mr K's decision to go down neither route, nor to accept either option isn't the responsibility of NewDay.

Mr K says he did get an independent report, by pointing to the document from Airport Handling Services. Clearly this notes damage, but it doesn't describe costs of repair or replacement. It falls short of what I'd describe as an acceptable report fitting the requirements of the travel company's contract here.

Mr K says the investigator said that S75 doesn't apply. That's not the case, what the investigator and my position is, is that he hasn't done enough under the contract to show that NewDay should do anything more here or that it has treated him unfairly.

Mr K says that the terms of this contract meant that he'd have to either get a report in his destination country or bring back the defective luggage to have it assessed in the UK. In essence that is one of the terms of the contract he agreed to. So he is correct in that regard. And as I've described he could still provide such a report if he still has the damaged luggage.

In summary I think that Mr K hasn't lost out here due to what NewDay did. I think NewDay made a fair decision in not pursuing the chargeback any further. And I don't think it could be held responsible under S75 either considering Mr K didn't get a report as required. So I don't think I can fairly require NewDay to refund Mr K for the luggage as there is no persuasive evidence of the cost of repair or a report showing the value and brand of the damaged luggage. So this complaint is unsuccessful.

I do appreciate that this isn't the decision Mr K wants to read. But I don't think NewDay treated him unfairly.

My final decision

For the reasons set out above, I do not uphold the complaint against NewDay Limited. It has nothing further to do in respect of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 3 November 2023.

Rod Glyn-Thomas
Ombudsman