

## **The complaint**

Mr H is unhappy with how NewDay Ltd trading as Marbles card ("NewDay") handled a claim he made about a transaction on his credit card.

## **What happened**

Mr H was purchasing flights with his NewDay credit card on 2 July 2023. Mr H said his computer got hacked and the flight destination was changed to another country. The total he paid for the flights were £576.97.

When Mr H contacted NewDay to stop the payment, it said the payment had already been authorised and was currently pending on his account. Despite NewDay referring Mr H back to the airline, he was unable to resolve this directly with them. Mr H then raised a dispute with NewDay to get a refund for the flights. NewDay said it couldn't raise a chargeback dispute as his circumstances weren't covered under the Mastercard dispute rules.

Unhappy with NewDay's response, Mr H referred his complaint to our service.

An investigator considered Mr H's case and didn't uphold it. The investigator thought NewDay had acted fairly by not raising a chargeback as this scenario wasn't covered under the chargeback dispute rules. The investigator also said as there was no evidence of a misrepresentation, or breach of contract by the airline, they didn't consider a claim under section 75 was applicable either.

Mr H didn't agree with the investigator's view. In summary, he said as he'd paid for the flights using his credit card, NewDay should've stopped the payment when he initially contacted them. Mr H also thought NewDay should've done more to help him get a refund for the flights.

As Mr H remained unhappy, the case has now been passed to me to make a final 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.

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

### Chargeback

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, in this case Mastercard. It's not a guaranteed way of getting money back. While it's good practice for a card issuer to attempt a 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.

I've first thought about the way NewDay handled the chargeback claim. As I've said above, for a successful chargeback claim there needs to be a valid chargeback condition. I've looked at the list of chargeback conditions under which a chargeback may be processed with the relevant card scheme. As the flight tickets were provided and there wasn't a problem with the actual travel service paid for, I don't consider the conditions relating to services not being as described, or not being provided, to be relevant here. I also don't think NewDay could've used the condition relating to a credit not being processed because it doesn't appear to be in dispute that the booking wasn't refundable in this situation either.

As I don't consider there to be any other potential chargeback conditions that Mr H's dispute could've been considered under, I don't consider NewDay acted unreasonably by failing to raise a chargeback, as there doesn't appear to be a valid chargeback condition that might've led to a successful claim.

### Section 75

I've thought about NewDay's liability under section 75. Section 75 is a statutory protection that enables Mr H to make a like claim against NewDay for breach of contract, or misrepresentation, by a supplier paid by a credit card in respect of an agreement it had with him for the provision of goods or services.

There are certain criteria which must be in place for a valid section 75 claim, which appears to be the case here. So, in deciding if NewDay acted fairly in its claim handling I have looked at whether Mr H had persuasive evidence that the supplier had breached its contract or misrepresented it.

I appreciate Mr H said the destination he'd booked his flight for had been changed, during the booking process, but this doesn't give rise to a breach of contract. I've also not seen anything to suggest there was a breach of contract caused by the merchant. And so, as I don't think there is persuasive evidence that the supplier breached its contract with Mr H or misrepresented it, I don't think NewDay acted unfairly in not considering a section 75 claim here.

I've also considered what Mr H said about whether NewDay ought to have done more to stop the payment when he initially contacted them. When Mr H contacted NewDay, it confirmed the transaction had already been authorised and the payment was pending. When a transaction is "pending" it means the payment process has already started, and is still being processed, so it can't be stopped at that point. So essentially, once the authorisation process is initiated, the payment cannot be interrupted. I realise Mr H thought NewDay failed to act on stopping the payment, but at the point he had contacted them, and based on what he had also said, I don't think it was unreasonable for them to say they couldn't do anything about stopping the payment. And so, I can't say NewDay did anything wrong here.

I realise this will be disappointing for Mr H. But, for the reasons above, I won't be asking NewDay to do anything further.

### **My final decision**

I don't uphold Mr H's complaint against NewDay Ltd trading as Marbles card.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 April 2024.

Farhana Akhtar  
**Ombudsman**