

The complaint

Miss C complains NewDay Ltd (“NewDay”) won’t refund payments made to a car rental company whilst on holiday abroad which she didn’t authorise.

What happened

The details of this complaint are well known by both parties, so I won’t repeat them again here in detail. Instead, I’ll focus on setting out some of the key facts and on giving my reasons for my decision.

The key issue here is that Miss C says she didn’t authorise two payments to a car rental company in the USA - \$1,589.14 and \$150 debited from her NewDay credit card in June and August 2022 respectively. Miss C says she already paid up-front for the car rental when booking her flight through an online provider in February 2022 - who I’ll now refer to as “E”.

When Miss C discovered she had been charged these amounts, she raised a dispute with NewDay. Amongst other things, NewDay asked Miss C for evidence of what was agreed at the point of sale when using E’s website.

Miss C was unable to get this as E asked her for the previous NewDay credit card number. Miss C no longer had this information, and NewDay has only able to find the last four digits of the card.

As NewDay didn’t refund Miss C, she complained. Miss C sent NewDay a copy of the car rental agreement with the US rental company which included itemised charges for the \$1,589.10 charge. The agreement wasn’t in Miss C’s name, but her partner’s, Mr G.

Miss C added that all the items on the car rental agreement were optional. And she wasn’t ‘told about them, didn’t want them, didn’t need them, and didn’t have them’. So Miss C wanted the charges refunded by NewDay using the chargeback process.

NewDay upheld Miss C’s complaint in part. In summary, some of the key points it made were:

- When it applies a chargeback credit to an account as part of the card scheme’s dispute process, it may get reversed based on the merchant’s challenge – and on the evidence Miss C may or may not provide.

A chargeback is only a temporary credit while the merchant responds with their challenge and whilst NewDay reviews the claim. Having done so, NewDay hold Miss C liable for the transactions

- The declaration form issued to Miss C advised her that it may re-debit her account should the merchant provide sufficient evidence to support the dispute. NewDay cannot dispute the transaction further as it has followed the card scheme’s process correctly

- Miss C would need to provide evidence she didn't receive the services she paid for. What she has provided didn't detail this
- The card scheme sets the procedure for chargebacks, and NewDay cannot alter or deviate from it. When dealing with disputed transactions, NewDay only has one chance to raise a chargeback claim against the merchant, which is why the supporting evidence Miss C can provide is vital towards the success of her claim
- NewDay is sorry Miss C's case was reopened and she wasn't advised that there's nothing further it could do. Because of the poor customer journey and the inconvenience this caused, NewDay applied £30 compensation to Miss C's account

Unhappy with what NewDay said, Miss C referred her complaint to this service. One of our Investigator's looked into her complaint, and in summary they found:

- NewDay hasn't made an error in processing the car rental payments. From the information available they can't see there was a different agreement in place, or the charges made were unfair or unauthorised. So the rental agreement was likely consented to
- The payment in June 2022 was authorised by CHIP and PIN. The rental agreement details all the charges billed to Miss C
- Miss C said she only discovered the agreement during the rental period and had not agreed to any of the charges on there. But it's normal for customers to go through agreed charges at the start of the rental period, and authorise the payment and other costs that may be chargeable after the rental has completed
- The toll charges were also discussed with the car rental company and Miss C in emails she's sent to this service
- There is no evidence to support the charges were not consented to by Miss C. She hasn't been able to provide the initial booking details from E. But even if she had, an agreement at the start of the rental would've superseded any pre-booked agreement

Miss C didn't agree with what our Investigator said. In response, the key points she made were:

- She always pays for car hire upfront and did not sign anything. The CHIP and PIN transaction was only for the deposit of \$200 to be returned
- The car rental company has committed fraud against Miss C and she never travelled out of the state for some of the extra charges that were applied. She had only authorised a payment of \$200 – not another \$1,500

As there is no agreement, this 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.

Having done so, I've decided not to uphold this complaint. I'll explain why.

Miss C says she didn't authorise the payments the car rental company debited her account

for. In short, NewDay is required to refund the amount of an unauthorised transaction. The relevant regulations, to this effect, are the Payment Services Regulations 2017 (PSRs 2017). Miss C says she didn't authorise the payments taken by the car rental company, and she only authorised a \$200 deposit to be refunded.

The PSR's make provision for pre-authorised payments. This sort of arrangement is typical of payments to hotels or car rental firms when the full extent of the service cost isn't known until it has completed.

Miss C accepts she used her CHIP and PIN at the point of picking up the rental car when she was handed the agreement. She says she did so to receive a refund on the \$200 deposit. It's not clear from the information I have why Miss C was being refunded a deposit when she says she had paid for the entire rental up front. But for the purposes of what the PSR's say, and what I've said about pre-authorisation above, I'm satisfied the transaction was authenticated in line with what the PSR's say.

But the regulations relevant to this case say that is not, on its own, enough to enable NewDay to hold Miss C liable. So I also need to think about whether the evidence suggests it's more likely than not Miss C consented to the transactions being made.

The amount quoted on the rental agreement on the day the car was picked up by Miss C and Mr G as 'Deposits/Payments' for \$1,589.14 is the amount that was paid from the card. Miss C says she only authorised for her deposit to be returned. But I question this given she said she had paid for the rental all up front. I think it's most likely this was a payment and pre-authorisation for any additional costs picked up during the rental.

Miss C was given this agreement, albeit that it's in Mr G's name. I note she says she didn't read it, but anything like this exchanged at the point of rental would be important information Miss C should read in relation to entering a rental contract. What's important here is whether I think Miss C consented to the payments she says were made fraudulently.

Based on what I've said above, I think it's most likely Miss C consented to these payments, and under what the PSR's say, she should be held liable for them.

That brings me onto what I think is the real issue of this complaint – whether NewDay have fairly and properly followed the chargeback process.

Chargeback is the process by which settlement disputes are resolved between card issuers and merchants under the relevant card scheme. The term 'chargeback' basically refers to the payment liability - in other words, where the debt sits.

The chargeback system's intended to resolve settlement disputes. Most of the chargeback reasons in the card scheme rules relate to problems with settlements. But behind some of those settlement disputes, there may be something that's gone wrong between a cardholder and a merchant. So the chargeback scheme might be able to be used to try to resolve that problem, without needing to resort to more formal resolution, such as court action.

When processing a chargeback, the card issuer – in this case, NewDay – should check the nature of the problem against the list of possible chargeback reasons, to see what sort of evidence is required and the timescales that apply to determine if it can make a successful claim. They'll ask the cardholder for any relevant documents to back up the claim – like receipts, correspondence with the merchant, independent reports on the goods, and so on. If they think they can do a successful chargeback, they'll submit the claim to the card scheme and the card scheme will pass it on to the merchant acquirer.

Miss C has consistently said she booked and paid the whole amount for the rental with E. But she hasn't been able to get any of the information related to what she agreed with E as she no longer has the old NewDay credit card details which E require to locate information about the purchase.

NewDay say they only have the last four digits. This is unfortunate, but I would expect Miss C to have had email confirmation of what she agreed to from E. Without this information, I can understand why NewDay declined her claim as she didn't have the crucial information it needed to make a successful claim.

I note Miss C, and her partner whose name the rental agreement was in, attempted to resolve the issue directly with the merchant from the emails they've sent. And that the merchant defended what they'd charged. Generally, when a merchant defends their position, and unless the matter goes to arbitration, a claim is unlikely to succeed.

I'm also minded on agreeing that a rental agreement provided at the point of acquiring the car would likely supersede any pre-booked agreement. So after weighing everything up, I'm persuaded that NewDay have acted fairly and reasonably when declining Miss C's chargeback. I'm persuaded that there was little or no prospect of it succeeding.

I've considered that Miss C may have some recourse to the provisions of the Consumer Credit Act. But I've not looked into this further given the contract for the rental of the car was in Mr G's name – and she had made the payment using her credit card.

Lastly, I note NewDay paid Miss C £30 for providing her with poor customer service. Given what went wrong, I don't think it needs to do any more.

My final decision

For the reasons above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 5 July 2024.

Ketan Nagla
Ombudsman