

The complaint

Mr G complains about how NewDay Ltd trading as Aqua ("Aqua") dealt with his request for money back in relation to payments made to a travel company. Mr G also complains that they allowed his credit card account to exceed its credit limit and that his credit file now has adverse information.

What happened

The circumstances of the complaint are known to both parties. So, I won't go over everything again in detail. But, in summary, Mr G booked a holiday with a travel company I'll call "L" using his Aqua credit card but says he didn't receive confirmation of the booking. So, he rebooked this with L, again using his Aqua credit card.

When Mr G went on holiday, he noticed that he'd been charged two amounts. The payment for the first booking was £1,967.21, which was debited from his account on 27 April 2023, and the payment for the second booking was £2,248.65 which was debited on 28 April 2023. He contacted the hotel where he was staying and they told him that they'd only charged him once, for one booking.

Mr G contacted L about what had happened, but he didn't get anywhere. So, Mr G put in a claim with Aqua. He said he'd been charged twice for the same booking and the hotel he'd stayed in wasn't as described as there had been multiple customer service issues with ongoing maintenance and access to food and amenities. He asked for a full refund of £1,967.21 and a partial refund of £2,248.65.

Aqua says they asked Mr G to send them appropriate evidence that L had made a mistake that led to him being charged twice, and that the hotel wasn't as described as he had claimed. Aqua says they didn't receive enough evidence of this to either raise a chargeback or to show that there had been a breach of contract or a misrepresentation on the part of L. So, they didn't think there were enough grounds to uphold Mr G's claim under section 75 of the Consumer Credit Act 1974 ("s.75").

Mr G didn't agree and referred the matter to us. In doing so, he mentioned that Aqua shouldn't have allowed him to exceed his credit limit and that he had been prevented from making any payment to his account to prevent adverse information being recorded on his credit file. And Mr G said he'd been told by Aqua not to make any payments until their investigation had been concluded.

Our investigator didn't think the complaint should be upheld. She felt, in summary, that Aqua hadn't acted unreasonably by not raising a chargeback as there wasn't enough evidence to support the claim. And she didn't think there was evidence to show that L had breached their contract with him or misrepresented anything to him. She also felt that it wasn't unreasonable for Aqua to allow both payments to debit Mr G's account and that they were obliged to record accurate information on his credit file in relation to the account.

Mr G didn't agree with our investigator. So, his complaint has been passed to me for a 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.

As I mentioned above, I haven't gone into detail on the circumstances of this complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I want to assure Mr G and Aqua though that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

I've firstly considered whether Aqua acted fairly and reasonably in how it handled Mr G's request for getting his money back. In situations like this, Aqua can consider raising a chargeback or assessing a claim under s.75.

The chargeback process provides a way for a card issuer to ask for a payment to be refunded in certain circumstances. It's subject to rules made by the relevant card scheme and as a result isn't a guaranteed way of getting money back.

While it's good practice for a card issuer to attempt to 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 aren't met, a chargeback is unlikely to succeed. And something going wrong with a merchant won't always lead to a successful claim.

I've looked at the list of chargeback conditions under which a chargeback may be processed with the relevant card scheme. Although Mr G has said there was a problem with the actual travel service paid for, in that he says the hotel he stayed at wasn't as described, he didn't provide Aqua much in the way of detail about this. And Mr G I think said that this aspect of his complaint was secondary and hasn't referred to this aspect when he replied to our investigator. So, I'm not convinced this forms part of his complaint. But, if I'm wrong about that, I don't think that Aqua acted unreasonably in not raising a chargeback for this issue for the reasons I've given above.

I also don't think Aqua could have used the condition relating to a credit not being processed as I've not seen any evidence that shows either booking was refundable in this scenario. There is a condition relating to the purchase transaction not completing, but Mr G has shown us that two bookings were made with L. So, I don't think that situation is covered either. I note also that Mr G says that the first booking was refunded to him by L. But I've not seen any evidence of that on the credit card statements I've been provided with.

Therefore, while I know he'll be disappointed, and appreciate that he had no intention of making two bookings, I can't see that Aqua acted unreasonably in not raising a chargeback. I say this because I don't think there was a valid chargeback condition that might have led to a successful claim, from the evidence Mr G sent to Aqua.

I've next thought about Aqua's liability under s.75. This enables Mr G to make a like claim against Aqua for breach of contract or misrepresentation by a supplier paid by credit card in respect of an agreement it had with him for the provision of goods and/or services. There are certain conditions that need to be met for s.75 to apply, and I'm satisfied those conditions were in place.

The issue in this case is that I've not seen there was a breach of contract that Aqua could be held liable for. While I of course appreciate that Mr G didn't need or want two bookings, this doesn't give rise to a breach of contract. I've not seen sufficient evidence that the first

booking wasn't made, that L agreed to refund him or that they breached their contract with him by not doing so. I note also that Mr G said at one stage that L said there was a technical issue with their website. But I've not seen sufficient evidence of this or that the first booking failed because of an error on L's part.

Taking everything into account, I have to remember that I'm considering a complaint against Aqua and not L. So, I must consider their obligations as a provider of financial services – in this case the way they handled the chargeback request and its liability for breach of contract or misrepresentation under s.75. Even though I completely empathise with the situation and can understand Mr G's frustration and why he thinks it would be fair of him to receive a refund, it doesn't mean I can direct Aqua to refund him, where I've not got the grounds to do so.

I've also considered what Mr G has said about Aqua allowing him to exceed his credit card limit because of the combined cost of the two bookings. I understand this is primarily why his account has now defaulted. I don't though find that Aqua should have blocked the payment for the second booking bearing in mind that it's not disputed that anyone other than Mr G made the booking. And there was no obligation on Aqua to have blocked this transaction.

Finally, I note that Mr G says that he was prevented from making any payment to the account. I've asked Aqua about this, and they've said they've not seen anything that would have stopped Mr G from making a payment. It appears that a block of some kind may have been put on the account. However, that didn't form part of Mr G's original complaint which Aqua then investigated and on which they provided their answer. So, I won't be considering this in my decision. If Mr G wishes for this to be investigated, he will need to set up a separate complaint with our service.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 20 September 2024.

Daniel Picken
Ombudsman