

## **The complaint**

Mrs K complained about the way NewDay Ltd dealt with a claim for a refund for services she bought using her credit card.

## **What happened**

Mrs K is represented in her complaint by her husband. But to keep things simple I have referred to all submissions and actions taken from Mrs K's representatives as being made by Mrs K.

In November 2023 Mrs K bought five return flight tickets with an airline I'll call P using a travel agent I'll call S to travel in February 2024. She paid around £2,900 using her NewDay credit card. Mrs K says that she initially made an enquiry with S as she wanted to book flights to and from a specific airport. Mrs K booked the flight tickets after receiving a quotation and accepting the terms and conditions from S, but the flights were to and from a different airport.

After speaking with her son and doing some more research she decided she wanted to cancel the tickets straightaway but didn't contact S to request cancellation until the next day. When Mrs K called to cancel, S told her that she would only receive around £500 as a refund. Mrs K didn't accept this. She believed she was entitled to a full refund under P's terms, which she understood allowed full cancellation within 24 hours if the flight was more than 72 hours away. She raised a dispute with NewDay.

NewDay submitted a chargeback in early December 2023 and applied a temporary credit. Mrs K said she received an email from NewDay explaining the temporary credit and that she would be informed if the claim was defended. If no evidence was submitted in defence, the claim would be successful. She said she called NewDay the same day and was told S could defend the claim but if she didn't hear anything within 30 days then she could spend the temporary credit. Mrs K booked alternative flights a few days after the call. She said that she was told by the new airline she could cancel the tickets, if needed, minus an admin fee. NewDay said its notes don't show that a call was made on this day.

The chargeback was defended by S at the end of December 2023 on the basis the tickets were non-refundable. NewDay progressed the claim to pre arbitration at the beginning of February 2024 because the chargeback wasn't resolved in Mrs K's favour and S defended the claim again at the end of February 2024. Soon after, NewDay re-debited the temporary credit and told Mrs K that it wouldn't pursue the chargeback any further.

Mrs K complained that NewDay's delay in updating her meant she couldn't use the original tickets she booked with P. NewDay responded to her complaint and explained that it processed the chargeback correctly and it had no reasonable prospect of success if pursued further. Unhappy with this Mrs K referred her complaint to the Financial Ombudsman. While her complaint was with the Financial Ombudsman, P refunded her approximately £727 for a tax refund.

Our investigator considered the complaint and didn't uphold it. He said that he didn't think the chargeback had a reasonable prospect of success as the tickets were non-refundable (aside from tax) and didn't think NewDay was liable for a claim under Section 75 of the Consumer Credit Act 1974 (Section 75).

Mrs K didn't agree. She responded and made the following points:

- She thought she'd selected the most appropriate reason for her dispute, and she didn't get an option to rebut the defence provided by S.
- NewDay's delay in notifying her that it wouldn't progress the chargeback meant she was unable to use the flights with P and resulted in a financial loss.
- Mrs K felt there should have been a period of grace after booking the flights.
- She was unhappy S didn't inform P of the cancellation and as a result P gave a partial refund based on a "no show", she thinks if S informed P earlier, it would have had time to resell the tickets and she would have received a higher refund.

The Investigator noted Mrs K's points but didn't change his position on the complaint.

As the matter remained unresolved, the case has been referred to me for review.

### **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.

Where evidence is incomplete, inconsistent or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

I've reviewed and carefully considered the entire file, acknowledging that Mrs K has raised several different points of complaint. I've focused my response on what I believe is most relevant to the matter at hand. If I've not addressed a specific point, it's not because I've overlooked it or failed to consider it, but because I don't believe it's necessary to comment on it in order to arrive at what I believe is a fair outcome. The rules of the Financial Ombudsman allow me to take this approach.

I can see Mrs K feels strongly about this matter and I'm sorry she was unable to travel on the flights she booked through S.

I understand Mrs K wants a full refund for the amount she paid for the flights. She said she cancelled within 14 hours of booking them and she thinks she should have had a cooling off period after she booked the flights and felt pressured to book them. But I need to consider the actions of NewDay as the financial services provider in this complaint. I'm not considering a complaint about S or P. I've considered if NewDay has acted fairly and reasonably in the way it handled Mrs K's request for getting her money back and what statutory protections are available to Mrs K.

Where a payment has been made using a credit card, NewDay can consider raising a chargeback or considering a claim under Section 75.

### **Chargeback**

In certain circumstances a card issuer can raise a chargeback dispute under the relevant card scheme rules, in this case it's the Mastercard scheme. This is where the cardholder has a dispute with the merchant, but this is subject to strict rules and there is no guarantee that

the card issuer will be able to recover the disputed amount. Whilst there is no obligation for the card issuer to raise a chargeback claim, I think it's good practice to do so, where there is prospect of success.

The card schemes rules are stringent and are not something NewDay has control over. The rules are set by Mastercard and not NewDay. NewDay raised a chargeback under the chargeback condition, *credit not processed* based on the information it was provided by Mrs K. I think this was fair as it was the most relevant reason code for the circumstances she described. The rules state this is where the merchant hasn't credited a refund to the cardholder's account.

The merchant has an opportunity to accept the chargeback or raise a defence, which S did in this case. It referred to the quote and terms and conditions it sent to Mrs K prior to her booking the flights. These say that there is no automatic right to a refund and there is an administration charge of £60 per ticket if a refund is requested and presented to the airline. The quote states:

*"Date Changes Before Departure: Not Permitted  
Date Changes Before Inbound Departure: Not Permitted  
Cancellation Fees Before Departure: No Refunds  
Cancellation Fees After Departure/No Shows/Partly Used Tickets: No Refunds".*

It also referred to the terms and conditions, which state:

#### *21. Airline Ticket Refunds*

*Air tickets returned to us for a refund are subject to an administration charge of £60 per ticket, irrespective of the number of tickets returned and you will be required to pay a per ticket cancellation charge Imposed by the airline or the consolidator pursuant to their terms and conditions. There is no automatic right to a refund and, when you return an air ticket to us, we will arrange for it to be presented to the respective airline or consolidator to assess eligibility for a possible refund in accordance with the relevant airline's or consolidator's terms and conditions...*

I've also seen the following in the terms and conditions:

#### *38. Changes & Cancellation By You*

*Amendments and cancellations can only be accepted in accordance with the booking conditions of the Supplier/Principal of your Arrangements. The Supplier/Principal may charge the cancellation or amendment charges shown in their booking conditions (which may be as much as 100% of the cost of the Arrangements and will normally increase closer to the date of departure). In addition you must pay us an administration fee of £60 per person per booking.*

*Air Ticket Refund: Many airline tickets are paid for in full at the time of booking and in case of cancellation, unless otherwise stated, they are non refundable, non changeable and non re-routable."*

I've also considered the airline's terms and conditions which I believe Mrs K has had sight of, which state:

**5.4.2.** *If you purchased your Ticket from the [P] Call Center, through an Airport Ticket Sales Office or a Travel Agent, and if you change or cancel your Ticket through the [P] Website, no transaction charge will apply to this transaction in the following circumstances:*

*a) If there are 72 hours or less left for the Scheduled Flight departure time on your Ticket, the reissue must be made or the refund claim must be submitted within 60 minutes of the completion of the original purchase; or*

*b) If there are more than 72 hours left for the Scheduled Flight departure time on your Ticket, the reissue must be made or the refund claim must be submitted within 12 hours of the completion of the original purchase.*

**5.4.3.** *Please note that service fees may separately be applied for reissue transactions made through the [P] Call Center and Travel Agents.*

Mrs K booked her tickets through a travel agent, (S), for a flight with more than 72 hours left to departure. In order to get a full refund, she or (S) would have needed to make a refund claim within 12 hours. I can't see that Mrs K requested her cancellation within 12 hours of the completion of the original purchase to meet the terms for a full refund. On the balance of probabilities, I think it's likely that the chargeback didn't have prospect of success on the basis that Mrs K wasn't promised a full refund and the terms and conditions S provided says that no refunds are available in this situation. I don't think NewDay acted unfairly when it didn't pursue the chargeback any further.

I acknowledge that Mrs K is dissatisfied with not being informed sooner that NewDay would not proceed with the chargeback, which she said ultimately led her to miss the opportunity to use the original flights. NewDay has confirmed that it holds no record of a call from Mrs K on the date she claims she was told about a 30 day timeframe, which ties in with the contact notes as I can't see a call made on this date. I've also had to consider if Mrs K would have been likely to be given this timeframe as it seems like quite a short time to receive a response from S and for NewDay to then contact Mrs K. I can't be certain that Mrs K would have been informed of this given there are several stages of a chargeback process. On balance, I'm not persuaded that it's the most likely information to be given.

As there is insufficient evidence of the timeframe Mrs K said she was told, I've relied on the evidence that is available. I can't see that NewDay informed Mrs K in writing of a timeframe for when the temporary credit would become permanent. NewDay stated it doesn't contact every customer when a chargeback is defended and instead it moved to the next stage of the process, which I think it did in line with the usual timeframes expected. I think it would have been helpful had NewDay informed Mrs K that S had defended the claim, but it's likely that it lets its customers know the ultimate outcome, which it did. So, I don't think it's fair to hold NewDay responsible for Mrs K not being able to use the flights because of this. I'll explain why.

I've noted by the time S responded to the claim, Mrs K had already booked alternative flights. I understand she has said she would have cancelled these flights, with fees, by early January 2024. But there's no clear evidence of what the cancellation fees would have been, or whether cancellation would have been possible as Mrs K travelled using these flights. Additionally, I've considered that Mrs K raised the chargeback as she said she was due a refund after cancelling the tickets. And whilst I appreciate that there was some urgency to get an answer for Mrs K, I don't think that it's unreasonable if NewDay thought the flights were cancelled and couldn't be utilised, so it proceeded to the next stage without informing Mrs K first.

I can't see that Mrs K let NewDay know of her intentions prior to booking the flights. I appreciate that Mrs K feels she has lost out because she wasn't informed of the outcome of the chargeback sooner. However, I don't think it's fair to ask NewDay to refund her because she decided to book alternative flights and not travel on the flights booked through S without

getting confirmation the chargeback was successful, particularly when it's not clear she was advised of the timescales she said she was told.

I've also considered whether NewDay should have raised a partial refund specifically for the airport taxes. However, since Mrs K has now received a refund for the airport taxes directly from the airline, I don't think there is a need to undertake further analysis.

I've also thought about whether there were any other conditions that NewDay could have used to process a chargeback. It's important to note the condition types are set by Mastercard and not NewDay. As there is a lack of supporting evidence for what went wrong, if anything, during the negotiations and this doesn't fit well with the chargeback conditions that may be relevant. So, I don't think any other rules would have led to a different outcome.

## **Section 75**

It doesn't appear NewDay considered a claim under Section 75. However, as Mrs K has disputed the transaction when she contacted NewDay I think it has had the opportunity to do so. It's not unusual for a financial services provider to raise a chargeback and explore this option for helping in recovery of funds, however as the payment was made using a credit card, I think NewDay could have also considered a claim under Section 75.

Under Section 75, NewDay is jointly liable for any breaches of contract or misrepresentations made by the supplier of goods or services – which is S in this case. In order for there to be a valid claim under Section 75, there needs to be a debtor-creditor-supplier ('DCS') agreement in place and the transaction needs to be within certain financial limits. I'm satisfied the criteria has been met for a claim to be considered.

I can see that Mrs K feels strongly about the way the tickets were booked and felt pressured. I need to consider if there was a misrepresentation or breach of contract by S, which NewDay should be held liable for.

S sent Mrs K information about the travel plan which included details that there is no option for a refund if she cancelled and Mrs K agreed to this. I'm satisfied she was informed that there weren't refund options for the flights. So, I don't think there was a misrepresentation by S to say that Mrs K would have been eligible for a full refund.

There's evidence to show Mrs K emailed S to confirm that she wished to proceed with the booking. S booked the flights as requested and informed Mrs K of the available refund if she cancelled the flights when she said she called the following day. I don't think she was told she would be able to get a full refund. I think S carried out its role to arrange the flights and informed Mrs K of the available refund with reasonable care and skill based on the information provided.

Similarly to my position on the chargeback, for the particular circumstances of this complaint, I don't think Mrs K was told by S she could get a full refund for cancellation, and it gave her information about cancellations before she entered into the contract. Those terms don't appear to have been breached so overall I'm not satisfied that a misrepresentation or breach of contract occurred. Because of this, I don't think NewDay should be held liable for a like claim under Section 75 for a misrepresentation or breach of contract. I've also considered whether any other sections of the Consumer Credit Act 1974 might be relevant or lead to a different outcome, but there's insufficient evidence there was a problem with the negotiations Mrs K had with S that NewDay could be held liable for.

Therefore, while I know it'll disappoint Mrs K, I'm not going to direct NewDay to take any further action.

**My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 23 July 2025.

Amina Rashid  
**Ombudsman**