

The complaint

Mr U complains that NewDay Ltd trading as Aquacard ("NewDay") didn't handle his claim correctly.

What happened

Mr U purchased a number of items from a retailer I shall call "G" on 6 November 2023 at a total cost of £477.47. However he decided he didn't want the goods and chose to return these via tracked delivery. He says he wasn't subsequently refunded as G said they didn't receive the goods and felt Mr U sent them to the wrong address.

Mr U didn't agree and said he sent the items back correctly and therefore was due a refund. As the matter remained unresolved, Mr U contacted NewDay to raise a chargeback claim against G and a Consumer Credit Act 1974 ("CCA") section 75 claim ("S75") against NewDay.

NewDay raised a chargeback claim for Mr U on 6 February 2024, however it was defended as G were unable to track down the parcel and noted that the last letter in the delivery post code was incorrect. G therefore considered Mr U had made this error when returning the goods and therefore the package could've been delivered to the incorrect postcode address down the road from them rather than their actual street address.

NewDay therefore chose not to pursue the chargeback claim further and issued a final response letter (FRL) to Mr U on 1 May 2024. They said Mr U had returned the item to the wrong address and so was still liable for the purchase. In addition they noted there was no evidence of any faults with the items returned either and cited this as another reason for the chargeback claim being unsuccessful.

NewDay also clarified they could look at a S75 claim but would need more information regarding this. Mr U then submitted further evidence regarding the delivery but was notified they couldn't raise a S75 claim as the purchase didn't meet the financial limit requirements.

As Mr U remained dissatisfied, he brought the complaint to our service. Our investigator reviewed the complaint and felt NewDay could've done more regarding the handling of the chargeback claim. While he appreciated G had disputed the claim, he noted Mr U had subsequently provided more evidence to NewDay shortly after the claim was declined showing the item was delivered correctly. He felt that NewDay should've considered this further supporting evidence as it meant the claim had a reasonable prospect of success.

While our investigator did agree with NewDay that there wasn't a valid S75 claim as the required financial limits hadn't been met, he felt they needed to refund the disputed amount to Mr U for their handling of the chargeback claim.

NewDay disagreed and said they didn't need to ask for more information once the merchant had disputed the chargeback claim. They then subsequently stated in an email to our investigator in September 2024 that this further tracking information wouldn't have changed the outcome to the chargeback claim as they had raised this under the code for faulty goods rather than a refund not received. As NewDay hadn't been presented with any evidence that the items purchased were faulty, they considered there wasn't a prospect of success here.

Our investigator didn't agree with NewDay's position and said that they had raised the chargeback under the wrong code. They therefore felt Mr U was still due a refund under his chargeback claim considering all the available evidence.

As NewDay didn't agree, this case has been passed to me for 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've read and considered the evidence submitted by the parties but won't comment on it all – only the matters I consider to be central to this complaint. This isn't intended as a discourtesy but reflects my role in resolving disputes informally.

It's important to note that NewDay aren't the provider of the goods here – so in deciding what is fair and reasonable, I'm looking at their particular role as a provider of financial services. In doing so I note that because Mr U paid for this transaction using his credit card, both chargeback and a S75 claim could possibly help him. So in deciding what is fair and reasonable I've focussed on this.

Chargeback

There is no requirement for NewDay to raise a chargeback, but it's often good practice to do so. However, a chargeback isn't guaranteed to succeed and is governed by the limitations of the particular card scheme rules (in this case Mastercard). I've considered the relevant chargeback rules in deciding whether NewDay acted fairly.

Chargeback code used

The chargeback code in this case is a source of some contention as NewDay registered this under "goods or services were either not as described or defective". I've reviewed Mr U's chargeback claim declaration form of 2 February 2024 and his statement simply says:

"I have returned the order back to the merchant however I still haven't had my refund. I have chased them too via email".

I do see the first line of the document says NewDay's understanding of the claim is that the items received were defective or damaged and have been returned, and this is likely due to the dispute type picked in Mr U's original submission. While it's correct that the item was returned, this seems to have been due to Mr U's intention to return the goods during the cancellation period due to no longer wanting them rather than any issues with the items.

Mr U says NewDay had previously told him that 'goods or services were either not as described or defective' was more appropriate than the 'credit not processed' reason as a refund hadn't yet been agreed by the merchant. He also says he asked NewDay to review the category after the claim was raised and change as necessary.

I've reviewed NewDay's account notes and see advice along these lines was given to Mr U regarding a previous chargeback on 19 September 2023 and while I'm not aware of the circumstances of that particular claim, I can see why Mr U may have considered that to be more appropriate here.

Regardless I don't consider it the consumer's responsibility to ensure the correct chargeback code is raised. Mr U provided his own statement for the chargeback claim in his declaration form and there is no reference to any defective merchandise there at all.

It's more likely that NewDay made an error to raise this claim under this code with all evidence considered and it should have been the chargeback reason "credit not processed". This is relevant as NewDay did subsequently say to our investigator that additional evidence relating to the delivery didn't apply as there was insufficient evidence the goods were faulty under the chargeback code raised.

I note however that G's chargeback claim submissions also includes previous correspondence to Mr U of 15 November 2023 stating the return is tied to 'unwanted items' and would need to be returned at his own expense. They also confirmed Mr U would receive a refund within 14 days of receipt of the goods. Therefore with relevance to the charge back code 'credit not processed', a refund was promised by G to Mr U upon receipt of the goods so the code would reasonably apply.

This would also be in line with G's terms and conditions on their website which has a section for 'Unwanted Goods'. It says that if a consumer changes their mind on their order and if the products had been received within 30 days, they could request a return online.

It also confirms if the items are in a re-sellable condition, the order would be refunded excluding shipping costs. As the items were purchased on 6 November 2023 and the response from G for the requested return was on 15 November 2023, this was certainly arranged in time. I've also seen the delivery notification confirming it was delivered on 28 November 2023 so again within the 30 days of purchase.

I therefore don't think it fair for Mr U to be penalised for NewDay incorrectly raising the wrong chargeback code and while Mr U may have raised it initially under a different code following previous advice, it would've been for NewDay to consider if the code chosen actually applied to the circumstances of the claim.

Delivery address of returned goods

I've further considered NewDay's handling of the claim regarding the return delivery address. I note G provided a robust defence and confirmed they hadn't received the item and the last letter in the delivery postcode was incorrect. G felt that Mr U had inputted the wrong postcode to the courier and it was likely that the item was delivered to the postcode address rather than the street address (which was inputted correctly).

NewDay therefore concluded there wasn't a prospect of success here and declined Mr U's chargeback claim on 18 April 2024. Mr U responded a few days later on 25 April 2024 and didn't agree with NewDay's handling of the claim. He said that any error would've been on the courier's part and he also provided a copy of the package tracking showing the correct delivery address.

He then followed this up on 28 April 2024 with GPS coordinates from the courier and a picture of the delivery address matching that of the retailer. He felt this was sufficient evidence that the item had been delivered to G correctly, despite the issue with the final letter of the post code.

Our investigator asked NewDay why they didn't consider this further evidence under the chargeback claim but their position was they didn't need to as it should've been presented initially by Mr U and then also that the claim would've still failed as the reason code was for defective items returned, of which no evidence had been provided.

As mentioned above, it would've been for NewDay to raise the chargeback under the correct code and I've insufficient evidence this was the case. But even if NewDay did believe they had raised the claim correctly, I can't see any evidence of communications between NewDay and G regarding the goods being faulty, nor any submissions from Mr U regarding this either. Therefore it looks likely that NewDay raised the claim under the incorrect code but proceeded to only look at the issue of delivery.

While I appreciate G did defend the chargeback, Mr U provided more evidence in the following days which does look to be persuasive. The first is showing that the courier tracking details are correct including the postcode, and the second confirms GPS delivery to the right address along with a picture of G's premises.

The evidence from G suggests that somewhere along the line the last letter of the postcode changed but this hasn't affected the first line of the address pinpointing the street location. So while the courier could've delivered the item to the wrong postcode (and in turn a completely different street address), the further submissions from Mr U shows it to be delivered correctly to G's street location.

It would've then been appropriate for NewDay to have progressed the claim further to second-presentment and then arbitration if needed. While I do recognise there is uncertainty to the outcome had the claim progressed, I must consider what would have most likely occurred on balance. And with consideration of the evidence available, I do think there was a reasonable prospect of success here – and ultimately Mr U was deprived of this opportunity.

As NewDay didn't do this I do think the chargeback claim was mis-handled and the evidence provided from G wasn't tested as I'd expect. To put things right I think NewDay should therefore refund Mr U the £477.47 disputed under this chargeback claim along with 8% interest simple per annum from the date the claim was declined to the date of settlement.

HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must also give Mr U a certificate showing how much tax they've taken off if he asks for one.

S75

S75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there is either a breach of contract or misrepresentation by the supplier of goods and services.

NewDay says however that the financial limits required for a S75 claim haven't been met. Mr U would've needed to make a transaction with a cash price of over £100 but no more than £30,000.

I see the total purchase price here was £477.47, however this comprised of several items all individually priced below these financial limits. This consisted of wiring accessories such as socket outlets, dimmer switches and dummy sounders and so would reasonably be considered separately when applying these financial limits.

I'm thus satisfied the financial limits haven't been met here for each of the items when considered separately and NewDay didn't do anything wrong in not raising a S75 claim.

My final decision

For the reasons above, NewDay Ltd (trading as Aquacard) must:

- Pay £477.47 to Mr U plus 8% interest simple per annum from the date his chargeback claim was declined to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U to accept or reject my decision before 28 May 2025.

Viral Patel
Ombudsman