

The complaint

Ms S complains that NewDay Ltd trading as Fluid (NewDay) failed to refund her through its disputes process and says it sent her another customer's information.

What happened

Using her credit card with NewDay Ms S made a payment to a mechanics (who I'll call V) on 11 December 2023 for the sum of £1,793.76.

Ms S says she took her car to V for some diagnostics to be run but they removed the car's gearbox and let her know the repairs needed would cost around £3,500. Ms S tells us she explained she couldn't afford that and asked that they put the gearbox back in and return the car. Ms S had found she could buy a second-hand gearbox for £800 and so thought she could get the work done cheaper elsewhere.

However, Ms S has said V told her the gearbox couldn't be refitted and so she believed she would need to have the work done with V. But Ms S says she later found out that the gearbox could have been refitted. V let Ms S know they could do the repairs differently and reduce the price to around £1,800. Ms S tells us that thinking she had no other option she agreed to the works being completed but asked for the old parts to be returned to her, which V agreed to. Ms S says when she collected the car V refused to provide the old parts or an invoice and Ms S has said the owner was aggressive towards her and she paid under duress despite not knowing whether the works had been completed as agreed.

Ms S contacted NewDay on 7 January 2024 to see if it could help her get her money back.

NewDay raised a chargeback for an addendum dispute for the full cost of the transaction using the evidence Ms S provided. It also temporarily credited Ms S's account with the disputed funds. In response to the chargeback NewDay has said V provided evidence on 25 March 2024 relating to a different customer and the work they had done on the vehicle. NewDay reviewed the evidence and informed Ms S that the dispute had failed. It said the dispute failed because Ms S had paid the merchant and the merchant had provided the service, but no further payment was taken. NewDay also said no breach of contract could be identified.

Ms S was unhappy with this result and pointed out that the evidence V had provided didn't relate to her. NewDay maintained its position, so the case was referred to this service.

One of our investigators considered the case and didn't think NewDay had acted fairly. NewDay said that as Ms S had been present for the transaction and used her chip and PIN card, the claim still failed in its view.

As NewDay didn't agree with our investigator's view and maintained its position, the complaint has been passed to me for review and 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 think it would be helpful for me to be clear here that I am only considering the actions of NewDay in this case.

The transaction Ms S disputed was made using her credit card and she paid V directly. So, NewDay could have considered the claim through the chargeback process or under Section 75 of the Consumer Credit Act 1974 (section 75).

Chargeback claims

Chargeback isn't a legal right and isn't guaranteed to get a customer a refund. That said it's good practice for a credit provider to attempt a chargeback where the circumstances are appropriate and there is a reasonable prospect of success. Strict rules apply to chargebacks, and these are set out by the card scheme operator, in this case Mastercard. These rules include timeframes for chargebacks to be raised and defended, and details of what evidence is needed for the claim.

NewDay chose to raise the chargeback as an addendum dispute. In the Mastercard chargeback rules this is described as:

"An addendum dispute is the dispute of a separate transaction that occurs after a valid transaction involving the same merchant and the same cardholder."

Having read Ms S's submission to both NewDay and this service, I don't think it was reasonable to raise the chargeback under this reason code. I can't see that Ms S has complained that V charged her twice or took a second payment that they were not entitled to. Rather Ms S has said that she isn't confident that V provided her with the service it charged her for. The reasons she provided for this were that V wouldn't provide an itemised invoice (although Ms S has since sent us a copy of this), the removed parts weren't returned to her (as had been agreed), and, during a period when V said the car was off the road, she could see from her insurance app that it was being driven.

Given all of this it would have been reasonable for NewDay to have raised a chargeback under the reason code for *"Goods and Services Not as Described or Defective"*. Had it done so it would have seen that the cardholder must have engaged in the transaction for the claim to succeed. Meaning that Ms S authorising the transaction, supported her position.

In addition, the defence V provided was in relation to another of its customers and had nothing to do with the claim Ms S had raised. I can't see NewDay queried this with V or made it aware it had incorrectly shared another customer's details with it. Even if NewDay didn't initially identify that V had sent it another customer's information, when it shared this information with Ms S, she made it aware of the error. So, it ought reasonably to have been aware at this point the evidence didn't adequately show V provided the agreed service to Ms S. So, I'm not persuaded that NewDay can say with confidence that the service was provided as agreed to Ms S or that it can reasonably say the merchant successfully defended the claim.

Further to this, a merchant is allowed 45 days to provide evidence defending a chargeback claim, where no defence is entered it's usual that the customer's claim would succeed by default. Looking at the evidence available, although the merchant has dated their letter to NewDay January 2024, NewDay has said V didn't provide their response until 25 March

2024. This is over 70 days after NewDay said it raised the chargeback on 12 January 2024 and so is outside the time frame allowed. Given this and the lack of evidence V provided in relation to Ms S's claim, I think it's more likely than not that the claim would have succeeded.

Taking everything into consideration, I'm not satisfied that NewDay used the most relevant reason code for the chargeback. Nor am I satisfied that if it had used the correct reason code and the evidence from V had been provided on time, that this evidence demonstrates that V provided the service Ms S paid for. So, I don't think NewDay have treated Ms S fairly in its handling of her chargeback claim.

Section 75 Claims

Section 75 makes the provider of credit (NewDay in this case) equally liable where there is a case of misrepresentation or breach of contract by the supplier of goods or services financed by the credit. However, it will only apply when the criteria for a Section 75 claim are met. Section 75 won't apply to any single item where the supplier has attached a cash price of £100 or less, or more than £30,000. In addition to this there needs to be a direct relationship between the debtor, creditor, and supplier otherwise known as a DCS agreement.

I can see from the evidence provided that the cash price falls within the parameters set out and Ms S paid V directly using her NewDay credit card. So, I think the necessary DCS agreement existed, and NewDay could have considered Ms S's claim under section 75. It appears that it did undertake some consideration of section 75 as NewDay said in its final response to Ms S that it couldn't identify a breach of contract. That said it didn't provide any reasoning for this or indicate what evidence it relied on to reach its conclusions.

However, given I think the chargeback should have succeeded I don't think Ms S has lost out in anyway as a result of NewDay not explicitly setting out what its findings were in relation to a section 75 claim.

My final decision

My final decision is that I uphold Ms S's complaint about NewDay Ltd trading as Fluid for the reasons I've set out and direct it to:

- Credit Ms S's credit card with £1,793.76 in respect of the chargeback claim; and
- Refund any interest, fees, and charges associated with this amount and added to the account from the date of the transaction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 12 September 2025.

Charlotte Roberts
Ombudsman