

DRN-5923106



The complaint

Miss R complains that NewDay Ltd (Aqua) declined her claim for a refund of a transaction made using her credit card account.

What happened

In September 2024, Miss R bought three mobile phones from a seller on eBay that I'll refer to as "Y". She paid £4,575 for the phones using her credit card account.

Y sent Miss R an email with the serial numbers of the three phones she'd bought. However, when they were delivered, one phone was damaged, and the second wouldn't switch on. She didn't want to open the box the third phone was packaged in. She tried to arrange a return of the phones through eBay. Miss R has provided screenshots showing she received eleven missed calls after midnight along with messages from Y who said they were on their way to her house. Miss R tried to arrange a return of the phones and a refund through eBay, but it shut her account.

In December 2024, Miss R asked NewDay to try help her get a refund for the phones. NewDay raised a chargeback and gave her account a temporary credit of £4,575. However, the chargeback was defended. EBay provided a statement from Y gave them reasons why her claim was false and she'd since had her eBay account closed. NewDay decided not to pursue a chargeback further and took back the temporary credit of £4,575 on 3 February 2025. As a result, Miss R exceeded her credit limit and was charged a £12 over limit fee.

NewDay went on to consider whether Miss R had a valid claim under Section 75 of the Consumer Credit Act 1974 ('Section 75'). Miss R provided screenshots showing the serial numbers on the packaging of each phone she purchased was registered to another owner. She provided photos showing damage to the phones. Miss R also provided an email chain from March 2025 showing confirmation of an appointment at one of the manufacturer's stores. The manufacturer listed the three serial numbers Y had provided and said all three phones had "*serial numbers that seem to be cloned*" and that the three phones were "*non genuine.*"

Having considered the evidence available, NewDay told Miss R she couldn't make a valid Section 75 claim. It said there was no valid 'debtor-creditor-supplier' (DCS) agreement because she bought the phones from Y via eBay, and eBay's involvement broke the DCS agreement.

Miss R complained to NewDay. Its final response of 15 April 2025 said she hadn't provided evidence to show the goods provided were different to what she ordered, and she was still in possession of these, so it hadn't pursued a chargeback further. NewDay then said she didn't have a valid Section 75 claim because there was no DCS agreement in place. However, it accepted it hadn't explained this properly to Miss R and credited her account with £50 to compensate her for the trouble and upset caused. It also refunded the £12 over limit fee.

Unhappy with NewDay's response, Miss R referred her complaint to our service. One of our investigators said NewDay's decision not to pursue a chargeback further was reasonable, given the evidence from the phone manufacturer wasn't available at the time.

However, the investigator thought NewDay's decision to decline the Section 75 claim was unreasonable. They explained eBay's involvement hadn't broken the DCS agreement here and NewDay should have considered the merits of Miss R's claim. The investigator thought it was unlikely the phones Miss R had been sold were advertised as 'dummy' phones. As the evidence showed it was likely she'd received 'non-genuine' phones, the phones she'd purchased had been misrepresented. To put things right, the investigator recommended NewDay rework the credit card as if the £4,575 transaction had not occurred on 23 September 2024, including refunding any interest or charges applied to the account as a result of the transaction. They also said NewDay should remove any adverse information from Miss R's credit file and pay her a further £100 compensation for the distress and

inconvenience caused.

Miss R accepted our investigator's opinion but NewDay did not. NewDay still thought there wasn't a valid DCS agreement in place and it reiterated that eBay had closed Miss R's account for raising false disputes. It also questioned the validity of the manufacturer's evidence. The investigator said there was nothing to indicate the manufacturer's evidence was false and it was unfair to take the view that the closure of her eBay account meant Miss R's claim should not be considered. As NewDay remained unhappy, this case was referred 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.

When a person approaches their credit card provider for assistance when something has gone wrong with a purchase they've made, there are a couple of ways in which their provider may be able to help. The provider could potentially attempt what is known as a "chargeback" on any payments made with the card, and they could consider a claim under Section 75.

Chargeback

Chargeback provides an avenue for a bank to raise a dispute with a merchant where something has gone wrong. However, it doesn't cover all eventualities, it isn't a legal right and isn't guaranteed to get a customer a refund. 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 and timeframes apply to chargebacks, and these are set out by the card scheme operator (in this case, that's Mastercard).

Miss R had said the phones were faulty, but Y said she was a scammer when the chargeback was defended. There was little persuasive evidence to disprove the evidence provided by eBay at the time, as Miss R had not yet obtained the phone manufacturer's evidence that the phones were non-genuine devices with cloned serial-numbers. So, based on the information available at the time, I don't think it was clear that Miss R had been provided with faulty or counterfeit goods. Without this, a chargeback was unlikely to succeed so I think it was reasonable for NewDay to decide not to pursue it further.

Section 75

Section 75 of the Consumer Credit Act 1974 allows a customer to submit a claim for breach of contract or misrepresentation by a supplier to their credit provider.

In this case, Miss R's claim would meet the relevant financial limits for a claim. However, NewDay has said the necessary DCS agreement isn't in place for Miss R to be able to hold it liable for what's happened under Section 75 of the Consumer Credit Act 1974. It says this is because the credit card payment didn't go directly to Y, and instead went via eBay. To summarise, Y was a seller on eBay, which operates as an online marketplace, recruiting sellers and accepting and passing on credit card payments for them.

For there to be a valid DCS agreement, there must be arrangements between NewDay and Y for it to finance purchases made by Miss R from Y. The card scheme is there to put such arrangements in place between those participating in it. In this case, the credit card payment went to Y via eBay but I think that was under arrangements of the required kind. This is because processing credit card payments to suppliers in this way is a widespread and accepted commercial practice which has developed over time and is either accommodated

by or specifically permitted by the major card schemes. I think the Mastercard scheme has developed in a way which brings transactions to suppliers via online marketplaces into its arrangements.

NewDay would have contemplated, when agreeing to give Miss R a credit card, that the way in which credit card payments were made would develop over time, and that the card would be used to pay suppliers in any way accommodated by the relevant card scheme. This is one such method, and due to the mutual participation of all parties within the card scheme I think there was a valid DCS agreement. So, I think NewDay should have reviewed the merits of Miss R's claim. If it had done so, I think it's reasonable to conclude it should have accepted her claim.

It is no longer possible to view Y's listing of the phones on eBay's website. However, eBay's emails list the exact product Miss R purchased. I think the evidence shows what she ordered was a genuine phone and there's nothing to show the phones advertised were not genuine. So, the question is whether the phones she received matched that description. Miss R has provided evidence from the phone manufacturer that says the phones she received are not genuine, with cloned serial-numbers. Based on the information available, I think it would be unreasonable to conclude the phones Miss R received matched the description provided on eBay's emails.

I note NewDay says it can't be sure the emails provided by the phone manufacturer are genuine. However, NewDay hasn't shown this to be the case so. Without this, I don't think it's reasonable to conclude the phone manufacturer's evidence is false or should be disregarded. NewDay has also said Miss R's eBay account has been closed. The evidence available shows Y claimed Miss R was a 'scammer' and this led to the closure of her account. However, eBay didn't explicitly say the account closure was linked to this transaction and instead gave a number of reasons why the account may have been closed. Miss R, on the other hand, has since provided subsequent evidence provided by the manufacturer says the phones were non-genuine, which contradicts Y's claim that the account was closed because of Miss R's alleged behaviour. Overall, I still think the evidence shows Miss R didn't receive the goods she paid for. Under the Consumer Rights Act 2015, this means Miss R is entitled to a refund, which she has not received from Y or eBay. Because of this, I think NewDay should have accepted Miss R's claim.

I'll set out below what NewDay should do to put Miss R back in the position she would have been in had the phones not been purchased. NewDay's re-debit of the transaction in February 2025 caused Miss R to exceed her credit limit, so it should remove any adverse credit information as a result of this transaction. It's clear this matter has caused Miss R some upset and inconvenience as a result of being left without this money for some months. To recognise this, NewDay should pay Miss R a further £100 compensation in addition to the £50 it has already paid.

To summarise, NewDay should:

- Rework Miss R's credit card account as if the £4,575 transaction on 23 September 2024 had not occurred, refunding any interest or charges applied as a result of the transaction.
- Remove any adverse information from Miss R's credit file as a result of the transaction.
- Pay Miss R an additional £100 compensation.

My final decision

My final decision is that I uphold this complaint and require NewDay Ltd (Aqua) to do what I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 6 January 2026.

Victoria Blackwood
Ombudsman