

The complaint

Mr F complained about the way NewDay Ltd trading as Aqua dealt with a dispute and subsequent claim under Section 75 of the Consumer Credit Act 1974 (Section 75) in relation to a package holiday he paid for using his credit card.

What happened

The events surrounding this complaint are well known to both parties, so I'll only summarise what happened briefly here. On 15 December 2024, Mr F booked a package holiday for six passengers through an online travel agent I'll call L. He agreed to pay around £2,900 and was due to travel in June 2025. Mr F paid a deposit of £150 using his NewDay credit card and agreed to pay the remaining balance by five monthly instalments of around £550.

Later in December 2024, Mr F requested to amend the booking to add four additional passengers. L provided a quote of around £1,628 for the amendment. Mr F accepted the quote by email but said this was conditional on receiving an amended booking confirmation. On 25 December 2024, L debited £1,281.59 from Mr F's credit card and explained that this reflected a lower confirmed price from suppliers. Mr F said despite the price being lower and the amount being taken unexpectedly, he accepted this charge. However, Mr F's credit card account was then debited for £1,474.31 on 31 December 2024.

Mr F said he did not authorise both transactions. On 1 January 2025, he emailed L to complain and asked for the holiday to be cancelled, he requested a refund of the amounts paid. Mr F said his email bounced back and that he later raised a formal complaint via L's web chat. He also changed his card details to prevent further payments.

Mr F also raised a dispute with NewDay, and said the transactions were unauthorised and asked for a block to be placed on further debits. NewDay raised chargebacks and temporarily credited the dispute amounts to Mr F's account and explained that these could be reversed once the disputes were reviewed.

On 10 January 2025, Mr F contacted L again and said he wished to revert to the original booking and have the disputed transactions refunded. He did not dispute the original deposit. Mr F said he received no further communication from L.

On 27 January 2025, Mr F received an email from an airline I'll call R, confirming the flights had been cancelled. R said that the flights could be changed for free or a refund requested, but the refunds for bookings made through L would need to be processed by L. Following this Mr F disputed the original deposit with NewDay which was also temporarily credited. He said he didn't contact L.

In March 2025, NewDay wrote to Mr F to say that L had defended the chargebacks and that the temporary credits would be reversed. NewDay said that there was evidence Mr F had accepted the amended booking and the associated charges, and the holiday services remained available at the time the disputes were raised.

Mr F raised a complaint about how his dispute had been handled and asked NewDay to

consider a claim under Section 75. He also told NewDay not to reverse the transactions as it would mean he would go over his credit limit.

NewDay didn't uphold the complaint. NewDay considered the complaint Mr F raised about the customer service but didn't think it made an error. It said it considered the Section 75 claim but didn't think there was a breach of contract as Mr F decided he wanted to cancel the holiday and it did not consider Section 75 applied. It referred to R's email and suggested Mr F contacted it to discuss his options.

Mr F referred his complaint to the Financial Ombudsman. Our investigator considered the complaint. He didn't think NewDay made an error with the way it handled the chargeback. He said that he didn't think NewDay were obliged to take action for a breach of contract.

Mr F didn't agree. In summary:

- He made a number of points about the inaccuracies of the investigator's findings.
- He said his complaint was about how NewDay handled unauthorised payments.
- He also said NewDay didn't listen when he asked for the transactions not to be reversed as these would result in him going over his credit limit and cause financial harm.
- NewDay also failed in managing the chargeback and Section 75 claim.

As the matter remains unresolved it has been passed to me to decide.

I wrote to both parties to ask for further information. I also wrote to L but didn't receive a response.

I issued a provisional decision which said:

"I want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I want to assure Mr F and NewDay 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.

When considering what is, in my opinion, fair and reasonable, I take into account relevant law and regulations; regulator's rules including the Consumer Duty, guidance and standards; codes of practice; and what I believe to have been good industry practice at the relevant time. 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 can see Mr F has made substantive arguments and provided evidence to support the issues he faced and I'm sorry to hear about the problems he said he experienced. Although I empathise with the situation Mr F was in, I'm considering NewDay's responsibilities as the financial services provider and the actions it took in considering the request for a refund. It's important to note, I'm not considering a complaint against L. I've considered what statutory protections are available alongside other methods NewDay may have been able to explore to try and help Mr F with getting his money back.

It's not disputed that Mr F agreed to pay for a package holiday and paid a deposit of £150. He also agreed to spread the cost of the remaining balance over five months for around £550 per instalment. He also wanted to add passengers and agreed to pay an amount for this amendment, although the amount that was ultimately charged was different from the

original quote. I've considered how NewDay handled Mr F's dispute and whether it needed to refund Mr F.

Authorisation of payment

I note that Mr F's primary concerns when he contacted NewDay was that L debited his account unexpectedly for the £1,281.59 he needed to pay for adding passengers and then when a payment was debited contrary to the payment schedule he was sent for £1,474.31. Mr F said that he didn't authorise these transactions.

I can see that L's terms and conditions state:

"Unless otherwise specified, we will automatically (if possible) take payment from the same debit/credit card used to pay your deposit."

I accept that L debited amounts which differed to the quote Mr F was provided and from the original instalment plan and I understand Mr F said he was unaware of the payment amounts debited from his account. However, I'm satisfied that Mr F agreed to both the original booking and the cost of the holiday and the later amendment. He also agreed to L's terms and conditions and he had given permission to use his credit card for future payments. And whilst he may not have agreed to the specific amounts debited I don't think NewDay acted unfairly in treating the transactions as authorised.

Given the payments were taken using a method Mr F had already approved I'm satisfied it was reasonable for NewDay to pursue a chargeback rather than treat the transactions as unauthorised.

Chargeback

Chargeback is based on the relevant card scheme rules. In this case it's the Mastercard scheme rules. A card issuer can attempt a chargeback on behalf of a cardholder where they dispute a transaction with a merchant, if they meet the criteria of the rules. A chargeback is not guaranteed to succeed, and a card issuer does not have to raise one.

NewDay raised a chargeback claim and applied a temporary credit for the amounts disputed and I think this was fair of it. However, L disputed the chargeback and said Mr F had accepted the terms and conditions and settled the transaction using its 3D secure payment portal which processed credit and debit card payments and said that it verified Mr F's identity. It said that it didn't receive a request for cancellation. It said if Mr F decided to cancel, the cancellation terms and conditions would apply. L said the services were available, operational and not cancelled and no refund was due to Mr F.

NewDay didn't agree to pursue the chargeback further and said that L provided a payment schedule for the payments taken and Mr F agreed to the price of adding passengers. Based on the submission Mr F provided at the time the dispute was raised, I don't think NewDay acted unfairly as I don't think the dispute would have met the requirements or had reasonable prospect of success under conditions such as "No cardholder authorisation" or "Travel/entertainment services cancelled/returned and credit not processed." I've also thought about if NewDay could have continued the chargeback based on the flights being cancelled, but I don't think this would have led to a different outcome as it's likely that L would have argued that it was unaware of the cancellation and there was a process to get a refund for the flights as detailed by R.

Mr F has explained that as the temporary refunds were re-debited by NewDay, this resulted in interest and charges and he wants these refunded. However, as I think NewDay acted

fairly by not pursuing the chargeback I don't think it's unfair if NewDay applied any charges as a result of the re-debits. I think it made it clear that the temporary refunds could be re-debited.

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 L in this case. However, Section 75 doesn't make NewDay responsible for everything that L did that Mr F might be unhappy with. Consumers may be unhappy with a supplier for a range of reasons, including poor customer service and not meeting customer expectations, but Section 75 only provides a remedy where there has been a breach of contract or misrepresentation. So, while Mr F may have several reasons for being dissatisfied with L, he can only pursue a claim against NewDay under Section 75 where those reasons amount to a breach of contract or misrepresentation.

In order for there to be a valid claim under Section 75, there needed 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.

The Consumer Rights Act 2015 (CRA) is also relevant to this complaint. The CRA implies terms into the contract that the services will be performed with "reasonable care and skill". The CRA also sets out what remedies are available to consumers if statutory rights under a goods (or services) contract are not met.

The Package Travel and Linked Travel Arrangements Regulations 2018 (PTRs) are applicable to the contract too; it makes L responsible for the performance of the contract and if there is a lack of conformity in the package it must remedy this within a reasonable period set by the traveller unless that it is impossible or entails disproportionate costs, taking into account the extent of the lack of conformity and the value of the travel services affected.

It's worth noting that the PTRs also say that a traveller must tell their package organiser i.e. L, about any problems "without undue delay".

NewDay considered a claim but didn't think there was a breach of contract as Mr F requested to cancel the holiday in his email to L.

Mr F said there was a breach of contract because L debited his account for a lower amount than originally quoted for the additional passengers, followed by a further debit which he said wasn't agreed. However, the evidence shows that Mr F expressly accepted an amendment to the booking by adding passengers. He provided an email confirming that acceptance. While he says he didn't agree to the lower amount, I'm not persuaded that being charged less than the quoted figure can reasonably amount to a breach of contract.

The applicable terms and conditions are clear, which state "Amendment charges are subject to change at any time. Please note that amendment fees are non-refundable and amendments can only be requested by the lead passenger on the booking". I think this explains the amendment charge wasn't fixed and could change after the request was made. In addition, the amendment email states "If you accept the quote to add the passengers, we will charge the cost difference to the same bank account linked to your booking. We'll then send you an updated booking confirmation by email." So I think Mr F was informed that the difference of cost for the amendment would be charged to his credit card.

I have also considered whether the way the payments were taken amounts to a breach of contract. Mr F agreed to pay the total price for the holiday and authorised use of his credit

card for that purpose. I think the instalment plan was a payment option, not a core contractual term. I don't think a variation in how or when payments were taken amounts to a failure to perform the contract. At most, I think it would represent an administrative issue.

I can see from L's website it states: "Our payment options are subject to availability (entirely at our discretion), how close to departure you're booking and only apply if you've opted for a refundable room". I'm satisfied that the instalment plan was discretionary and not a guaranteed contractual right. Even if I were to consider that L made an error by debiting an amount outside the schedule, I don't think this would have entitled Mr F to cancel the holiday or receive a refund, particularly given the applicable cancellation terms. I think it's likely to resolve this issue, there could have been an adjustment to the payment schedule as there was an outstanding balance for the holiday still payable.

The terms also state that cancellation is required to be submitted through "manage my booking" and Mr F sent an email. I'm not satisfied that Mr F validly cancelled and therefore I don't think NewDay can be held liable for the holiday not being cancelled. In any event, I don't think Mr F would have been able to obtain a full refund even if the holiday was cancelled properly, because at that stage the flights were non-refundable.

I understand that R cancelled the flights and Mr F contacted NewDay to raise a dispute for the deposit. I agree that the cancellation of the flights could mean that there was a breach of contract. However, in this case Mr F said that he didn't contact L and ask it for a refund. He said that the holiday was cancelled. I appreciate Mr F may not have known his rights under the PTRs, however, while I understand this, I don't think at the point the flights were cancelled this meant that Mr F would automatically get a refund for the entire holiday.

The PTRs state that the traveller must contact the organiser without undue delay. I would expect that had Mr F done this, L would have been expected to offer him replacement flights to ensure the package conformed within a reasonable period of time. And if this wasn't possible then Mr F may have been able to terminate the contract without paying a termination fee and if appropriate claim for a price reduction or compensation for damages. However, although NewDay had been informed the flights were cancelled I don't think it was required to inform L of the flight cancellation. It informed Mr F in its response to the Section 75 claim to reach out to L and R about the cancellation of the holiday and flight cancellation, and I think it acted fairly by doing so. Overall, I don't think there's sufficient evidence that there had been a breach of contract. So, I don't think NewDay acted unfairly for declining this claim.

Having reviewed all the information provided by both parties, I can see Mr F has put in a lot of effort to compile the information to support his position. I appreciate the concerns Mr F has raised and this isn't the outcome he'd had hoped for. However, whilst I sympathise about the difficulties Mr F experienced I don't think there is sufficient evidence to show that NewDay acted unfairly by not refunding Mr F. I think it was reasonable for NewDay to raise a chargeback before considering a claim under Section 75 and I think it progressed the chargeback and Section 75 claim within a reasonable period and I don't have grounds to direct it to pay any compensation."

NewDay didn't respond to the provisional decision. Mr F responded and provided a detailed submission setting out why he believes the payments taken by L were not contractually authorised and why he considered NewDay should be held liable.

Mr F said that his dispute was about the transaction £1,281.59 debited on 25 December 2024 and £1,474.31 debited on 31 December 2024. He said that the agreement to amend the booking was conditional on receiving an amended booking confirmation. He said he was waiting for L's confirmation from the supplier, and the amendment had not been finalised and

therefore he was not obligated to make payment. He disputes that the instalment plan was merely administrative and the payment schedule forms when the contractual framework when payments were due. He also said that under Section 75 there was a breach as L didn't have authority to take the payments at the time they were processed.

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 carefully considered the points Mr F has raised along with the documents and arguments he provided. While I appreciate the detailed explanation he has given and the effort he has put into presenting his arguments, the additional comments do not change my position. Therefore, my decision remains.

Mr F has raised a number of detailed arguments about the contractual position between himself and L and whether L had the right to take the payments when it did. However, my role is not to determine the contractual dispute between Mr F and L in the way a court might. Instead, I must decide whether NewDay acted fairly and reasonably when handling Mr F's dispute including its decision to pursue a chargeback and its consideration of the claim under Section 75.

Mr F said the two payments taken weren't authorised. He argues that his acceptance of the amendment to add passengers was conditional on receiving an updated booking confirmation and that the contract had not crystallised. He also says agreement to amend the booking does not amount to consent to specific card transactions.

However, I'm still persuaded the evidence shows that Mr F accepted the amendment to add passengers and agreed to pay the cost of doing so. The amendment email explained that if the quote was accepted, the difference in costs would be charged to the same payment method linked to the booking. I'm satisfied that Mr F already agreed to the cost of the holiday and the amendment and the use of his credit card for payments relating to the booking and accepted L's terms and conditions.

I recognise Mr F's point that the specific amounts debited differed from the quote he had received and from the instalment schedule he expected. However, in the context of the booking where he had agreed to pay the overall cost of the holiday and authorised the use of his card for payments I don't think NewDay acted unreasonably in pursuing a chargeback rather than treat these payments unauthorised. Additionally, I think based on the information available I'm not satisfied that taking the payments outside of the instalment plan Mr F expected amounts to a breach of contract. I think that the payment options are subject to availability and discretion. Even if L took payments in a way that differed from the schedule Mr F expected I'm not persuaded that this would amount to a breach of contract that would entitle Mr F to cancel the booking or receive a full refund.

I appreciate that this situation has been frustrating for Mr F and he feels strongly that the payments shouldn't have been taken in the way they were, however having considered the available evidence and the further arguments he has provided I'm not persuaded that NewDay acted unfairly in the way it handled Mr F's dispute, the chargeback process and the Section 75 claim.

Although I appreciate Mr F will be disappointed with my decision I don't require NewDay to do anything more to resolve the complaint.

However, I should point out that Mr F doesn't have to accept this decision. He is free to pursue the matter by more formal means such as through the courts.

My final decision

For the reasons I've set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 10 April 2026.

Amina Rashid
Ombudsman