

complaint

Mr C complains NewDay Ltd won't refund a payment made on his credit card to a secondary ticket selling website ("the Website") for concert tickets.

background

In December 2017, Mr C says he bought two tickets for an event which was due to take place abroad, in July 2018, on his credit card. In total, he paid €361.33.

Mr C says soon after completing the purchase, he'd heard negative feedback about the Website – in particular, he heard he wouldn't be able to gain entry to the event because it wouldn't be his name on the tickets. And so, he decided to resell the tickets on the Website but then later changed his mind and tried to cancel the resell of the tickets. Despite changing his mind about the resell, Mr C says he received notification from the Website that the tickets had been sold. Mr C contacted NewDay for help and asked them to dispute the payment.

NewDay looked into the matter, but they didn't think they could help. They said they didn't feel there was enough to defend the chargeback. NewDay also reviewed Mr C's complaint under Section 75 of the Consumer Credit Act 1974 (CCA). But they said they didn't think there had been a breach of contract. So, they didn't uphold Mr C's claim.

Unhappy with NewDay's response, Mr C brought his complaint to our service. Our investigator looked into his concerns. Overall, she didn't think NewDay had acted unfairly by declining Mr C's request for a refund. She explained there wasn't anything to suggest Mr C's tickets wouldn't allow him into the event and there also wasn't enough evidence to suggest there was a misrepresentation or breach of contract by the Website and so she didn't think NewDay needed to do anything else.

Mr C disagreed. He said there had been a lot of media attention on the fact that people weren't being allowed into events if their name wasn't on the tickets. So, the complaint has been passed to me.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

This complaint is about NewDay, as Mr C's credit card account provider. It's not about the Website, which isn't a financial service provider and so doesn't fall within my remit. I'm only considering whether Mr C authorised NewDay to debit the account with the value of the payment, and whether they should have helped with the dispute with the Website in any other way.

Mr C accepts he made the transaction for these tickets and he hasn't disputed that he knew the amount he was paying, just that the process of buying the tickets felt pressurised and rushed. I appreciate Mr C's concerns about the process, but I'm unable to comment on the Website's process. I'm only able to look into the actions of NewDay. Taking everything into account I'm satisfied the transaction was properly authorised by Mr C and correctly applied to Mr C's credit card account with NewDay.

could NewDay challenge the transaction through a chargeback?

In certain circumstances, when a cardholder has a dispute with a merchant (as Mr C does here), the card issuer (NewDay) can attempt a chargeback. Generally, we say it's fair for a card issuer to attempt a chargeback - or to challenge a payment - if there's a reasonable prospect of success, for example where goods or services aren't received, or it appears that the payment wasn't properly authorised by the cardholder.

Indeed, we're aware of cases, with some similar features to this one, where a chargeback has been successful. But I don't think NewDay could've challenged the payment on the basis Mr C didn't properly authorise the transaction, given the conclusions I've already set out.

The crux of Mr C's complaint is that he doesn't feel the tickets he was sold were valid - because his name wasn't on the tickets, he didn't think they'd be accepted and therefore he wouldn't gain entrance to the event. Additionally, Mr C says as the event was abroad, he didn't want to travel a long way with significant other costs on the off chance he *might* gain entry. Mr C also says he didn't know he was buying from the Website. Instead, he thought he was buying from an authorised ticket seller.

NewDay raised a chargeback and whilst they did so, Mr C says they credited the transaction amount to his account. The Website disagreed with the chargeback and provided their reasons to NewDay. They essentially said they provided the service Mr C paid for. They also explained they're a ticket resale platform, their website shows the company name clearly and that there is clear messaging around what their charges are. NewDay say they considered this and decided not to pursue the chargeback any further. So, it's for this reason NewDay re-debited Mr C's account of the amount.

From the information available to me, I can see the Website showed they were a ticket reselling website. And as Mr C bought tickets from this site, he was on notice he was buying from a ticket reselling website. Ultimately, Mr C bought the tickets but chose not to attend the event and instead, attempted to resell them. So, I don't think NewDay could have challenged the payment on the basis that he didn't get what he paid for.

Bearing in mind the Website's stance and the information they provided in response to the chargeback claim, I think NewDay's position of deciding not to take the chargeback process further was fair and reasonable.

how about Section 75 of the Consumer Credit Act 1974 (CCA)?

As the payment was made using a credit card, I have also taken into account how Section 75 applies to the transaction. In certain circumstances, Mr C has an equal right to claim against NewDay as he does against the supplier (the Website) if there's been a breach of contract or misrepresentation by the supplier if certain conditions are met.

My role isn't to decide NewDay's liability under Section 75. Instead, as statute requires me to, I need to decide what's fair and reasonable, taking into account any relevant law, such as the Consumer Credit Act 1974 (CCA). For a valid claim under Section 75 there must be a debtor-creditor-supplier arrangement in place. The Website's terms and conditions in this case say:

"1.2 Ticketing Exchange. [Website's name] provides a service that allows members who want to buy tickets ("Buyers") to find members who want to sell tickets ("Sellers"). [Website's

name] does not take title to the underlying ticket and the actual transactions are between the Buyers and Sellers.”

This satisfies me that the tickets aren't supplied by the Website. But that the Website does provide a service. And for this they charge buyers a fee. In regard to the fee, the Website says they:

“...charge a service fee on top of the ticket price. This fee is displayed in the check-out process and covers the cost of maintaining the [Website's name] platform, guaranteeing tickets and providing customer service.”

So, in effect, there is a debtor-creditor-supplier arrangement between Mr C, NewDay and the Website, albeit not for the direct provision of the tickets themselves. Instead, the Website provides a service. The service consists of two main things - the platform and the guarantee.

So, I think the Website is responsible for how ticket information (such as venue, date, time, and the asking price) is displayed to buyers. And I think, under the guarantee, they're responsible for providing replacement tickets or a refund if the seller doesn't fulfil their obligations around supplying the tickets.

Another condition necessary for a valid claim under Section 75 is that the service provided by the Website must have a cash price within certain financial limits. Having looked at the breakdown of costs from the email Mr C provided, I can see the cost for the two tickets was €263.70. The Website charged booking (€76.40) and handling fees (€5.95) and the remainder was tax (€15.28). So, even though the currency displayed at the time of the booking was in Euros (as the event was abroad), I'm satisfied the Website charged less than £100 for its services. I say this because even if I add all three figures up together, it doesn't even amount to €100. So, I don't think this case meets the required financial limits to have a claim under Section 75. As such I do not have to consider whether there is a breach of contract or a misrepresentation here as Section 75 does not cover Mr C for this particular transaction.

However, for the sake of completeness, I will describe my position if this case had met the financial limits. For a successful claim Mr C would need to show a breach of contract or misrepresentation by the Website. I understand Mr C says he didn't believe he'd be able to gain entry to the event with a ticket that had a different name on it. So, it's for this reason he initially made the decision to resell the tickets on the Website.

For similar reasons as described earlier, I'm not persuaded that there was breach of contract or misrepresentation here by the Website. I appreciate Mr C says there was a lot of coverage in the media about this issue, but I can only look at Mr C's complaint and the circumstances of his case. Ultimately, the Website made clear that they're a ticket reselling website – so it's likely the tickets will be in the seller's name. The Website have provided a service (as I've described) and I am not persuaded they have breached the contract. Nor have they misrepresented that service to Mr C to my mind.

It seems to me that it's possible Mr C is merging the responsibilities of the ticket seller and the Website. But the situation here is that they are distinct sets of actions and responsibilities. And I can only uphold this complaint against NewDay if they fail in some way or that I am persuaded that the Website has breached or misrepresented the service they provide. But I haven't seen anything to persuade me the Website, and hence NewDay, have done anything wrong here.

was there anything else within the Consumer Credit Act 1974 that NewDay should have considered?

Even though I've made the finding that I don't think there is a valid claim under Section 75, I think Section 56 of the CCA is also relevant to this complaint.

In summary, Section 56 has the effect of making the Website the agent of NewDay during the "antecedent negotiations" leading up to Mr C entering into a transaction with them. But essentially, this means NewDay is responsible for the acts or omissions of the Website in relation to transaction. In other words, NewDay has to stand behind the things the Website said, did, didn't say, or didn't do during the sales process.

For a valid claim under Section 56, there has to be a valid debtor-creditor-supplier arrangement in place - which is satisfied for reasons I've already explained. However, unlike Section 75, there are no monetary limits attached to Section 56. So, I can consider the impact of Section 56 and whether NewDay ought to have considered this in Mr C's case.

With this in mind, I've thought about whether the Website misrepresented the information or the tickets which Mr C purchased. Mr C has been consistent in telling us that he didn't want the tickets as he didn't think he'd be able to gain entry to the event, given it wasn't his name on the tickets. Had Mr C been aware of this beforehand, he wouldn't have purchased the tickets.

The Website offer a service whereby they provide the guarantee for tickets. Under this guarantee, the Website say they will take action (either by sourcing replacement tickets or in some cases, offering a refund) if it is proven the tickets are invalid. The terms on the Website itself also confirm that in some instances the original purchaser's name may be printed on the tickets. It also explains the tickets are valid and that a customer's name doesn't need match the name printed on the ticket to gain entry to an event. Having carefully considered this, I'm not persuaded the Website misrepresented the tickets to Mr C. Even though Mr C didn't receive the tickets (as he made the decision to resell them), on balance, it's likely the tickets would have had a different name to Mr C's on them. But as I've already explained, it was Mr C's decision not to go to the event. And I haven't seen anything which persuades me that the tickets weren't valid.

I note Mr C has also said he didn't know it was a ticket resale site. Having looked into the Website and their terms and conditions, I'm not persuaded this information was misrepresented to Mr C. As I think there are prominent messages on the Website which explain that they're a secondary ticketing marketplace.

In summary, while I appreciate this will come as a disappointment to Mr C, I think he authorised NewDay to debit his credit card account with the value of the transaction to the Website, so I think it was fair for them to do that. I also don't think NewDay acted unfairly in the handling of his chargeback claim. Whilst I don't think the claim meets the financial limits under Section 75, I've explained my reasons why I don't think there has been a breach of contract or misrepresentation here by the Website. And lastly, had NewDay considered Mr C's claim under Section 56, I don't think they would've acted unfairly by declining his claim. So, it's for these reasons, I don't think I can fairly require NewDay to refund Mr C for the tickets.

my final decision

For reasons explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 21 June 2021.

Leanne McEvoy
ombudsman