

complaint

Mrs M complains that NewDay Ltd won't refund a payment made on her credit card to a secondary ticket selling website ("the Website") for two tickets to a concert abroad.

background

In July 2016 two tickets were purchased through the Website to attend a concert in 2017 using Mrs M's NewDay credit card. The total cost charged to her card was just over £434. When Mrs M received the tickets and thought that they were fraudulent. So she didn't use them and tried to get her money back. She wasn't successful with this with the Website, so she complained to NewDay.

NewDay raised a chargeback but the Website and it defended the transaction saying the tickets were genuine and it had done what it was meant to. NewDay says it didn't think the appropriate relationship was in place to consider a claim under s75 of the Consumer Credit Act 1974, so it didn't take that any further. So it didn't think it could do any more for Mrs M.

Mrs M didn't think this was fair, so she brought her complaint to our service. Our investigator looked into the matter. Overall, they didn't think NewDay had acted unfairly by declining Mrs M's request for a refund. Mrs M didn't agree. So the complaint has been passed to me to decide.

my findings

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

I should make very clear that this decision is not about the secondary ticket selling Website, which isn't a financial service provider and so doesn't fall within my remit. Nor is it about the original purchaser of the tickets who then decided to sell the tickets through the secondary ticket selling Website (which Mrs M then bought). It is solely about what NewDay did or didn't do.

Mrs M accepts she made this transaction for these tickets and she hasn't disputed that she knew the amount she was paying. She also accepts that she was willing to purchase these tickets at that price. Only after the purchase, once she had concerns about the exact nature of the tickets she'd purchased did she speak to NewDay. So having considered what Mrs M has said (including that she made this purchase and paid for the tickets) and the evidence of NewDay, I'm satisfied the transaction was properly authorised by Mrs M and correctly applied to Mrs M's credit card account with NewDay.

could NewDay challenge the transaction through a chargeback?

In certain circumstances, when a cardholder has a dispute about a transaction, as Mrs M does here, NewDay (as the card issuer) can attempt to go through a chargeback process. I don't think NewDay could've challenged the payment on the basis Mrs M didn't properly authorise the transaction, given the conclusions on this issue that I've already set out.

NewDay is required to consider whether there is a reasonable prospect of success when it is considering whether to go through the chargeback process or not. If it does go through the process, then it must do so properly. The supplier (the Website) would then receive that

chargeback request and may agree to refund the payment or may contest the chargeback. If it contests, then NewDay should consider this and then if it still feels the chargeback is warranted then it can take the chargeback further and ultimately to the scheme provider (not NewDay) who will then make an independent determination on the matter. So NewDay isn't solely responsible for the decision whether to refund or not when going through the chargeback process. And it can decide to not proceed at any stage if it doesn't think there is a reasonable prospect of success.

NewDay raised a chargeback when Mrs M disputed the transaction. And I've seen the Website's response to the chargeback. Here it makes clear that the tickets were genuine, that Mrs M was getting them and that she'd made the transaction for them. NewDay considered this and didn't think there were persuasive reasons to continue challenging this transaction. So considering what it knew, all in all, I think NewDay's decision that there wasn't a reasonable prospect of success in going through the chargeback process any further is fair and reasonable in my opinion.

how about the Consumer Credit Act 1974?

The transaction was made using Mrs M's NewDay' credit card. Under section 75 of this Act, in certain circumstances, she has an equal right to claim against NewDay as she does against the supplier (the Website) if there's been a breach of contract or misrepresentation by the supplier. The Act includes certain financial limits for s75 to apply which have a minimum and maximum levels.

In summary section 56 has the effect of making NewDay responsible during the "antecedent negotiations" leading up to Mrs M entering into the agreement. In essence this means NewDay can be held responsible for the things that were done or said during the sales process before the agreement was reached. And under section 56 the financial limits requirement doesn't apply. For a valid claim under Section 75 there must be a debtor-creditor-supplier arrangement in place. The Website's terms and conditions 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 it charges buyers a fee. In regard to the fee, the Website says it:

"...charges 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 Mrs M, 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 is displayed to buyers. And I think, under the guarantee, it's responsible for providing replacement tickets or a refund if the seller doesn't fulfil their obligations around supplying the tickets.

The financial limits necessary for a valid claim under Section 75 are that the service provided by the Website must have a cash price of more than £100. I've seen a breakdown of the costs of the tickets and fees from the Website. But whether or not this dispute meets the financial limits required for Section 75 doesn't make a difference for the reasons I shall now explain.

For a successful claim Mrs M would need to show a breach of contract or misrepresentation by the Website. She says the tickets are fraudulent. However she's not provided any persuasive evidence showing this to be the case. She has provided photos of the tickets she got which are in the style of electronic tickets with a scan code. She's also provided pictures of hard copy standard tickets for the same event. However nowadays tickets come in a variety of formats and just because the tickets she received weren't in the format she was expecting doesn't mean that they were not genuine.

She also describes having a scan code reader which couldn't read the code on the tickets she received. However many firms which use scan codes use encryption methodologies within the code to prevent fraud. So unless Mrs M had access to those specific encryption methodologies I'd expect her reader not to work on such a code. So I don't think this persuades me that this shows that the tickets were fraudulent.

The Website says the tickets are genuine. And as Mrs M never tried to use the tickets to get in we don't know if they would have been accepted or not. However the website does provide a guarantee here so if she'd tried to get in and couldn't she'd not have lost out. NewDay isn't responsible for Mrs M's decision not to use the tickets. And considering what has happened here I'm not persuaded the tickets were fraudulent or that she'd have lost out if they were. So I don't think NewDay did anything wrong here.

This service has built up a thorough understanding of the website's processes and what consumers saw as they navigated through the sales process. This includes screenshots of the process from the time that Mrs M was using the website. Clearly in many sales process things can be done better. But NewDay can only be responsible here if there is either a breach of contract or misrepresentation which materially impacted Mrs M's decision to purchase. Clearly there was no breach because the tickets Mrs M bought were supplied to her. And having considered the website sales process throughout from the time Mrs M used it, I'm not persuaded she was told anything that was untrue which led her to buy tickets she'd not have bought otherwise.

I've considered the entire sales process including that before Mrs M makes the agreement, but it doesn't make a difference whether I consider this under s75 or indeed s56 because a claim under the act can only be successful if there is breach or misrepresentation. And I'm not satisfied there is one here.

So having considered everything I think that Mrs M hasn't lost out here as I think NewDay made a fair decision in not taking the chargeback issue further. I'm not persuaded that the tickets were fraudulent. And I'm not persuaded that there has been a breach or misrepresentation here by the website which makes a difference and that NewDay is responsible for. And I think NewDay correctly applied the cost of the tickets to Mrs M's credit card account. So I don't think I can fairly require NewDay to refund Mrs M for the tickets. As a consequence this complaint is unsuccessful. However I do appreciate that this isn't the result Mrs M was looking for.

my final decision

For the reasons set out above, I do not uphold the complaint against NewDay Limited. Under the rules of the Financial Ombudsman Service, I am required to ask Mrs M to let me know whether she accepts or rejects my decision before 15 July 2021.

Rod Glyn-Thomas
ombudsman