

complaint

Mrs C complains that NewDay Ltd failed to make an effective chargeback in respect of undelivered goods.

background

In November 2018 Mrs C ordered a toy from a website costing £133.14 and she paid for it using her NewDay credit card. Shortly afterwards she discovered information that suggested the website wasn't genuine. The toy wasn't delivered and she asked for a refund. She also contacted NewDay and was told to wait 10 days to see if a refund was received. Later the website was taken down and she contacted NewDay.

It made a chargeback on the basis a refund wasn't received although it said it had no evidence that a refund had been offered by the merchant. The chargeback was rejected by the merchant which supplied evidence of delivery of the toy. NewDay rejected her complaint, but paid her £10 for the inconvenience she had suffered.

Mrs C brought her complaint to this service where it was considered by one of our investigators who recommended it be upheld. He noted the chargeback had been incorrectly raised as 'refund not received' rather than under the category of 'goods not received'. He noted that the business realised this wrong, but failed to make a second chargeback under the correct category.

NewDay say that as the merchant had supplied proof of delivery it would have challenged a second chargeback, but the investigator said that he couldn't say that is what would have happened and suggested NewDay refund the transaction costs and pay an additional sum of compensation of £40.

NewDay didn't agree and said that given there was proof of delivery it shouldn't have to refund the transaction cost.

my findings

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

On the face of it the order was processed and the toy was delivered. However, a little background checking shows that there have been many instances of this merchant, which was based overseas, failing to deliver goods and allegedly forging delivery documents. I have examined the delivery document and see that the depot from which it was to be delivered by lorry to Mrs C was in Serbia which gives me cause to doubt it is genuine.

I am reasonably satisfied that Mrs C didn't receive the goods she ordered and a chargeback should have been made on that basis. Given the background information of the merchant which Mrs C shared with NewDay I think it would have been sensible to have checked with the courier as to whether the delivery note was genuine.

Even if a chargeback wasn't pursued I am not aware that NewDay explored a claim under Section 75 Consumer Credit Act 1974 which I suspect would have been successful. Therefore I consider this complaint should be upheld.

my final decision

My final decision is that I uphold this complaint and I direct NewDay Ltd to credit Mrs C's account with £133.40 and refund any interest she has incurred for this transaction. It should also pay her additional compensation for distress and inconvenience of £40. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 24 November 2019.

Ivor Graham
ombudsman