

## **complaint**

Mr S complains that NewDay Ltd won't give him a refund for an item he bought (and the associated customs charges) using his credit card. He says the item wasn't delivered.

## **background**

Dates and times are important to this complaint.

Mr S ordered an item online. He paid for it using his credit card for a high street department store, provided by NewDay. It was due to be delivered on 16 October 2014. During that day he used the online tracking service of the courier to check where his parcel was. It showed that the courier had tried to deliver it – without success. Mr S' wife had been in all day – so he couldn't understand why the parcel hadn't been delivered.

He got in touch with the courier and was told the parcel would be delivered the following day. But he later found out the courier's records showed it had been delivered on 16 October. There wasn't a proper signature on the courier's records to confirm Mr S (or his wife) had taken delivery of the parcel. Mr S also tried to get in touch with the seller to find out what'd happened. But they couldn't help him.

The law (section 75 of the Consumer Credit Act) says that if goods aren't delivered, a purchaser (Mr S) has an equal claim against the credit provider (New Day) as they do against the seller. So Mr S asked NewDay to give him a refund for the item. When it wouldn't do this he contacted us.

One of our adjudicators looked into Mr S' complaint. He agreed with Mr S that the parcel hadn't been delivered. So he recommended NewDay refund the cost of the item and customs charges to Mr S. The name on the courier's receipt didn't spell Mr S' name correctly. And it was in block capitals – not a signature. The courier's records showed the parcel was delivered at around the time Mr S was in touch with it about non-delivery.

NewDay had said part of its reasoning for not giving Mr S a refund was that there'd been a delay in him bringing his claim. But the adjudicator noted Mr S had – in the first instance – tried to contact the seller to sort things out. It was only when this wasn't successful that he'd got in touch with NewDay.

Mr S accepted the adjudicator's view. But NewDay didn't. So Mr S' complaint's been passed to an ombudsman to review and issue a final decision on.

## **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 case is finely balanced. Many about non-delivery of goods are. And the only people that know the true position are Mr S, his wife and the courier responsible for delivering the parcel. I have to decide what I think is most likely to have happened.

Here, I think there's just about enough evidence to suggest the parcel wasn't delivered. So NewDay should refund the cost of the item to Mr S.

The events of 16 October are key. The courier's records show the first attempt to deliver the parcel was at 11.56. They also show it was delivered and 'signed for' at 12.49. So it strikes me as odd that Mr S should then be in touch with the courier company at 13.01 to discuss where the parcel is and agree that it should be delivered the following day. I've seen a copy of the online 'chat' carried out about this.

There isn't a proper 'signature' on the courier's records. What is written is in block capitals and doesn't spell Mr S' name correctly – but I do accept there's only one letter difference.

It also seems clear to me that Mr S tried to contact the seller soon after the non-delivery. That's as I'd expect him to. It's only after this hasn't got him anywhere that he's turned to the protection the law gives him.

When I combine all of the above, I think it's most likely the item wasn't delivered. So NewDay should refund Mr S the cost of the item and the associated customs charges he incurred. This amounts to £2,883.50. At one point NewDay suggested it might pay Mr S a small amount of money to compensate him for the trouble and upset he'd suffered through the delay in trying to sort this matter out. I don't think that's necessary.

#### **my final decision**

For the reasons I've given, my final decision is that NewDay Ltd should refund Mr S £2,883.50 for the item that wasn't delivered and the customs charges he incurred.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 4 May 2016.

Andrew Davies  
**ombudsman**