

complaint

Mr D complains that NewDay Ltd have refused to refund him for goods he purchased with his store card.

background

I sent my provisional decision to both parties on 30 April 2018. A copy of this is attached and forms part of this final decision. In it I set out the background to this complaint, and I explained why I thought it should be partially upheld. I said that I didn't think it was fair NewDay hadn't given further consideration to raising a chargeback for Mr D, and that I thought they should pay him £75 compensation for the trouble and upset this caused. But, on balance, I didn't think it was likely that a chargeback would have been successful here. So I didn't feel that it would be fair to ask NewDay to reimburse Mr D for the cost of his goods.

Mr D responded to my provisional decision and said he'd been given the opportunity to refer his complaint about the retailer to the Retail Alternative Dispute Resolution Scheme (RetailADR), and that the time it took them to deal with it delayed his complaint to NewDay. He also said the retailer had agreed to refund the cost of the damage to his letterbox if he provided them with a receipt – which he'd done. And he reiterated the fact he'd asked the retailer for proof of delivery for his goods, but this hadn't been provided. So he feels a chargeback would have been successful.

He provided us with a copy of the receipt for repairs to his letterbox, the outcome of his referral to the RetailADR, and some correspondence he received from the retailer.

NewDay responded to my provisional decision and said they don't agree Mr D came to them in time to provide the evidence they needed to start a chargeback. They've explained that they don't consider email a secure method of contact, and their process is to receive documents in the post. As Mr D came to them on Friday evening and the time limit for making a chargeback was up on the following Monday they don't feel there would have been enough time for this.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I know both parties will be disappointed, but I still think this complaint should be partially upheld for the reasons I outlined in my provisional decision.

Mr D is unhappy with the way the RetailADR dealt with his complaint. I'm sorry to hear this, but the RetailADR isn't connected to our service. I understand why Mr D didn't ask NewDay for assistance earlier. But the time limits in place for raising a chargeback are set by the card scheme, and NewDay have to follow these rules.

However, I explained in my provisional decision why I thought Mr D had come to NewDay in time for them to consider making a chargeback. And I still feel this was the case. I appreciate NewDay's process requires postal correspondence. But Mr D came to them within the card scheme's time limit, so I'd expect to see they'd done their best to assist him, even if this required them to act urgently or outside of their standard process. I also note that there are

postal delivery services that would have been able to deliver documents posted over the weekend to NewDay on the Monday, even though Mr D might have had to pay for this.

I appreciate Mr D still feels strongly that a chargeback would have succeeded as he hasn't seen any proof from the retailer that these items were delivered to his address. We're not able to discuss his complaint with a third party, i.e. any party who isn't NewDay or Mr D. So whilst I appreciate Mr D wants to see proof of delivery in writing, it's not our role to ask the retailer to provide this. Where evidence is incomplete or not available, I have to make my decision based on what I think, on the balance of probabilities, is most likely to have happened in the circumstances. And I explained in my provisional decision why I think it's likely the retailer would have been able to provide proof of delivery if NewDay had initiated a chargeback. So whilst I sympathise with Mr D, and I'm sorry he's lost money, it wouldn't be fair for me to ask NewDay to reimburse him for this.

I understand Mr D is frustrated that the retailer initially agreed to refund him for the damage to his letterbox, but hasn't done so. But chargeback is a process whereby in certain circumstances a card provider can reverse a payment a consumer has made to a retailer. It doesn't allow for the recovery of any additional costs outside of this card transaction. So I can't fairly ask NewDay to reimburse Mr D for this damage, even though I can see he has proof repairs were carried out.

my final decision

My final decision is that I uphold this complaint in part. To put things right I require NewDay Ltd to pay Mr D £75 compensation for the trouble and upset their actions caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 7 July 2019.

Jenette Lynch
ombudsman

copy of provisional decision

complaint

Mr D complains that NewDay Ltd have refused to refund him for goods he purchased with his store card.

background

On 19 March 2017 Mr D placed an order online for a number of goods costing a total of £567.47. He paid using a store card issued by NewDay Ltd.

One item was cancelled by the retailer and he received a refund of £32.50 for this. But only one other item was delivered, with a value of £20.25. And this had been pushed through his letterbox and become stuck; causing damage that he had to pay £100 to fix.

Mr D complained to the retailer he had purchased the goods from. But they said they couldn't give him a refund for the goods he didn't receive as the third party delivery agent said they'd delivered them.

On 14 July 2017 Mr D contacted NewDay about the matter. But they didn't help him to get a refund either. So he brought his complaint to our service.

NewDay issued a final response letter explaining that they only have 120 days from the date of purchase to dispute a transaction through the chargeback process. And that as this was out of time on 17 July 2017, they didn't feel they had time to help Mr D when he came to them. They suggested he needed to pursue any complaint against the retailer he made the purchase from, or the agent who was meant to deliver the goods to his address. They said they had tried to speak to the retailer on Mr D's behalf. But they weren't able to discuss the matter due to data protection.

Our adjudicator agreed that it was unlikely NewDay would have had time to raise a chargeback request. And they felt that even had they been able to do so, it was unlikely it would have been successful as the retailer said the goods had been delivered.

Mr D disagrees. He feels he brought his complaint to NewDay within the required timescale. And he says that the retailer hasn't shown him any proof the goods were delivered. So he doesn't think they would have been able to defend the claim.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I know Mr D will be disappointed, but I don't think it would be fair to ask NewDay to refund the cost of the goods he purchased here. But I am going to ask them to pay him £75 compensation to reflect the trouble and upset caused when they failed to help him. I'll explain why.

All of the goods Mr D purchased were individually worth less than £100. So NewDay couldn't have raised a claim under section 75 of the Consumer Credit Act as this didn't apply here. But they could have considered raising a chargeback. Whilst the card issuer doesn't have to submit a chargeback request just because a card holder asks them to, we do consider it good practice for them to consider doing so if there is a fair chance it will be successful.

NewDay say that they felt the issue here was with delivery of the goods, and they had no evidence to support what Mr D told them had happened. They've also explained that they weren't able to take the matter any further as they had no evidence that Mr D had first raised his complaint with the retailer. And they felt that he'd brought his complaint to them too late for them to be able to help him, as under the card scheme rules, they had a time limit of 120 days from the date of purchase to raise a chargeback request.

I've thought about what NewDay have told us, and I agree that Mr D came to them very close to the 120 day deadline that they've correctly said applied. However, I don't agree that they couldn't have tried to help him further. Mr D spoke to them on Friday 14 July 2017, and 120 days was up on Monday 17 July 2017. I think that Mr D could have collated the information NewDay needed and provided it to them over the weekend. He's shown us he had the receipts from his purchases, and evidence that he had already complained to the retailer. So I think if NewDay had explained to him what they would need to further consider making a chargeback, and that they would need this by the Monday, on balance it's more likely than not Mr D would have been able to provide it to them.

NewDay say that they did consider raising a chargeback at the time. But I feel their reasons for not doing so were down to a lack of evidence from Mr D. And as they didn't give him the opportunity to provide this, I don't think they treated him fairly here. Mr D was clearly very upset about what had happened. So I feel it would be reasonable for NewDay to pay him £75 compensation for the trouble and upset caused when they didn't give him the chance to provide this evidence.

However, I do agree with our adjudicator that it's unlikely a chargeback request would ultimately have been successful here. So I don't think it would be fair to ask NewDay to refund Mr D for the goods he didn't receive.

I appreciate the retailer hasn't shown Mr D any proof from the delivery company to say his goods were delivered. But on balance I think it's more likely than not that they would have been able to provide this had they needed to defend a chargeback. Mr D has confirmed that he did receive one item, and that this became jammed in his letterbox. So this suggests to me that the delivery company did attempt a delivery to his address, and it's likely that no-one was at home to accept it or they wouldn't have needed to try and put a parcel through his door. Whilst I can't be sure what happened to the rest of his items, and I am very sorry that Mr D has been left out of pocket, that doesn't mean it would be fair for NewDay to refund him the money here.

I understand that during this delivery Mr D's letterbox was damaged and he had to pay £100 to fix it. Again I can't fairly hold NewDay responsible for these costs. There would have been no way for them to try and claim these for him had they made a chargeback request. They weren't part of the payment Mr D had made to the retailer that he wanted NewDay to reverse.

I appreciate that both Mr D and NewDay will be disappointed with my decision. But I've outlined why I feel this is fair and reasonable in the circumstances.

my provisional decision

My provisional decision is that I uphold this complaint in part. To put things right NewDay Ltd should pay Mr D £75 for the trouble and upset caused.

Jenette Lynch
ombudsman