

## **complaint**

Ms S complains that NewDay Limited ("NDL") will not give her a refund for three items which she said were missing from an order.

## **background**

Ms S has a store card account with NDL for transactions made with a retailer ("R"). She ordered some items to be delivered in mid-March 2015 before 9am. She said that the items were delivered after 9am, the package was damaged and had tape missing from it, and there were three missing items. She first complained to R about the missing items in one of its stores about a week later, and also emailed R then about them.

The adjudicator didn't recommend that the complaint should be upheld. He concluded from the evidence that he had seen, that NDL hadn't made an error in declining Ms S's claim for a refund. He had contacted R who said that all the items had been picked, packed and despatched.

Ms S disagreed and responded to say, in summary, that she had been treated unfairly.

## **my findings**

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

Where things are not clear, or in dispute, I make my findings on what I think is most likely to be the case. I take into account the evidence which is available to me and the wider surrounding circumstances.

I note that Ms S placed an order for 12 items and paid a fee of £8 for next day delivery before 9am. Whilst the delivery note shows that Ms S received the delivery at 8.50am, no electronic signature was provided. I note that Ms S then complained to R around 11am on the day of delivery to say that the delivery hadn't been received before 9am, and the early delivery fee of £8 was refunded to her.

Ms S then said that the parcel arrived in a damaged state. I note there is no note of this on the delivery tracking details. And R said where a package is extremely damaged, its delivery agent will not deliver the item. In addition where there are minor defects to a package, R would expect, at the very least, confirmation of this to be placed on the delivery note. I have been supplied a copy of this and there is no evidence to suggest that a note was made of this or that Ms S challenged this at the time.

I then note that Ms S did nothing about telling R about the three missing items until she went into one of its stores a week later. As the total value of the missing items was nearly £300, I would have reasonably expected Ms S to tell R about this on the day of delivery, or very shortly after. She said it was difficult to contact R by phone, but I can see that she was able to contact it by phone about the late delivery on the day of delivery, and request a refund of the £8 delivery fee. She also could have emailed R on the date of delivery about the missing items, but didn't do this until she was told to do so by the store.

I also note that R's website shows that queries about incorrect orders should be made by using its Contact us Form on its website, or by phone to a stated number.

So, having considered very carefully the circumstances of this complaint, overall, and on balance, I don't think that I have the grounds to find that NDL should refund the value of the three items to Ms S. I appreciate that this is not the outcome which Ms S wants. But, she doesn't have to accept my decision, and may pursue her case by alternative means should she wish to do so.

**my final decision**

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 29 December 2015.

Roslyn Rawson  
**ombudsman**