

complaint

Miss R complains that NewDay Ltd (trading as Aqua) didn't pursue a chargeback request for a transaction on her Aqua credit card.

background

In 2017 Miss R was abroad with relatives when their return flights were cancelled at the last minute. She checked online and found some suitable replacements via an agent that I'll call G. Miss R tried to book three flights using her Aqua credit card several times but the transaction never completed. She gave up and booked the flights direct with an airline.

When Miss R got back to the UK she found G had taken payment of around £1,500 for the flights from her Aqua account. She contacted G to ask for a refund. G initially said it couldn't find the booking then it told Miss R her booking had been successful and she had been sent email confirmation at the time. Miss R said she never received that email and G offered to provide a refund - less about £600 in cancellation fees. Miss R felt that was unfair so she contacted Aqua and asked it to process a chargeback.

Aqua says it made a chargeback request in line with information supplied by Miss R. But, G was able to defend that by supplying evidence to show the flights were booked and confirmed via the email address Miss R supplied. Aqua sent Miss R the information G had provided and asked if she had any evidence to rebut what G said.

Miss R says she remembers Aqua sending her some information from G in January 2018 and she completed a second chargeback form and returned it. She didn't keep a copy but she rang Aqua to check it had been received on 14th of February and Aqua said it had. Aqua says it has no record of receiving that form. It didn't think the chargeback would succeed if it was re-presented without more evidence so it couldn't take the matter any further.

Our investigator says Aqua should have challenged G's evidence. She's satisfied that Miss R received an email from G at 1:35am on the day she tried to book the flights to say the booking had *not* been processed. She thinks it was reasonable for Miss R to rely on that.

She notes the email G supplied to show the flights were booked isn't dated and copy emails G sent to Miss R and to Aqua aren't exactly the same. She considers the chargeback is likely to have succeeded if Aqua had pursued it further. She recommends the complaint should be upheld and Aqua should

- credit Miss R's account the full amount of the disputed transaction;
- refund any interest and charges applied to Miss R's account associated with this payment;
- remove any negative information that may have been reported on Miss R's credit file as a result of this transaction; and
- pay Miss R £250 compensation for distress and inconvenience caused.

Aqua doesn't think this is fair as it made the decision not to pursue the chargeback based on the evidence it had at the time. It sent Miss R the information received from G and she didn't provide evidence to rebut what G said - within the scheme time limits. So Aqua had no reasonable grounds to re-present the chargeback and it shouldn't have to provide a refund. Aqua says it is still open to Miss R to claim a refund under section 75 of

the Consumer Credit Act 1974.

my provisional findings

I issued a provisional decision on 17th February 2019 and an extract setting out my provisional findings appears below.

the chargeback process

Chargeback is a process that allows a customer to ask for a transaction to be reversed if there's an issue with the goods or services they've paid for. And I should make it clear that my role here is not to decide on the merits of the dispute between Miss R and the G. I'm looking instead at whether Aqua followed the rules of the relevant chargeback scheme - which is MasterCard in this case.

There's no automatic right to a chargeback. We generally think a financial business should attempt one if there's a reasonable chance of success. But, it's for the financial business to decide whether a chargeback is likely to succeed - albeit we'd expect it to make that assessment on a reasonable basis. For me to uphold this complaint, I'd have to be satisfied that Aqua did something wrong in the way it dealt with this chargeback under the relevant scheme rules.

what did Aqua do?

I have considered what happened carefully. I'm satisfied Aqua asked Ms R for information about the dispute in the way we'd expect when she got in touch to say she wanted a refund. I think Aqua must have thought there was a reasonable chance a chargeback would succeed based on the information Miss R provided because it raised a chargeback in December 2017.

To begin the chargeback process Aqua had to provide a reason code under the scheme rules. Aqua used reason 4855 here. This relates to cardholder disputes about goods not received and I think that sounds right in these circumstances.

Aqua sent information Miss R had provided and G responded with the following evidence:-

- *a screen shot of Miss R's "cart" history showing the flights requested were booked in the relevant names at 2.11am and the transaction was processed and order completed at 2.18am on the day Miss R tried to book the flights;*
- *an undated email containing flight details showing three tickets were booked on the flight Miss R wanted, in the names of Miss R and her two travelling companions;*
- *a screenshot of G's "sent" email box showing an email was sent to the email address Ms R provided at 2.21am on the same date;*
- *screenshots showing the online booking process Miss R had to follow to complete the booking, during which she had to accept G's terms and conditions before a booking could be processed; and*
- *a copy of G's terms and conditions.*

On the face of it, G seems to have supplied credible evidence to show the transaction completed around the time Miss R says she was trying to buy the tickets. And a confirmation email was sent to the email address Miss R provided shortly after - in time for her to use the flights. I think G did enough to show that the transaction was processed and the "goods"

(the tickets here) were provided. So, Aqua would have had to present some additional evidence for the chargeback to be re-presented successfully.

I'm satisfied Aqua sent G's response to Miss R in January 2018 and asked her to comment - this is what I'd expect it to do in this situation. Miss R says she responded - and I've no reason to disbelieve that - but she hasn't kept a copy of her reply.

I haven't got any information about what that response contained or when it was sent exactly. Aqua says it didn't receive a reply from Miss R, therefore it didn't have enough evidence to take the chargeback any further and it wrote to Miss R on 9 February to tell her that.

should Aqua have taken the chargeback further?

On the information I have I am not persuaded that Aqua was in a position to re-present this chargeback with a reasonable chance of success. I don't think the fact that G's email confirmation is undated would have been enough - in light of other info G supplied which shows the email was sent.

I've considered the email Miss R received from G at 1.35am on the day in question, which says (insofar as it's relevant) "we were unable to confirm your payment so your booking has not been processed. We have not taken any money from your account".

But I note Miss R says she carried on trying to book these tickets until around 2am - and I think it might even have been a bit later than that. Miss R says the flights she booked with the airline were processed "straightaway". I've seen an email from the airline that says that booking was confirmed just after 3am.

That's quite a long time after the 1.35am email. I can't fairly rule out the possibility that the booking G processed around 2.20am was the result of an attempt Miss R made after the 1.35 email was sent. And I'm not persuaded that the 1.35am email alone was sufficient to show that G was wrong to process this payment.

I'm satisfied Aqua raised a chargeback using an appropriate reason - the goods paid for were not provided. For the reasons I've explained above, I think G provided a credible response to show the correct goods were supplied at the relevant time.

I haven't seen anything to show that Miss R supplied Aqua with evidence to enable it to represent the chargeback with a reasonable chance of success - under the scheme rules and within the relevant time limits. This means I can't fairly find Aqua should have pursued the chargeback any further. So, whilst I'm sorry to disappoint Miss R, I am not currently persuaded there are reasonable grounds for me to uphold this complaint.

Section 75 Consumer Credit Act 1974

This section makes lenders like Aqua liable jointly with a supplier like G for breach of contract and misrepresentation, in certain circumstances. The considerations of a section 75 claim are different to what we look at under the chargeback process.

Aqua hasn't yet considered Miss R's claim for a refund under section 75. So, I have not looked at the merits of that in this decision - and my provisional findings shouldn't impact on Aqua's consideration of any future claim Miss R may wish to bring under that section.

If Miss R raises a claim under section 75 with Aqua, and she's unhappy with the response, she may be able to bring another complaint about that to this service.

I invited both parties to think about my provisional conclusions and provide any further information or comments by 7 March 2019.

my findings

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Aqua accepted my provisional findings but Miss R didn't respond. Our investigator phoned and emailed Miss R to check that my provisional decision had been received and asked her to get back to us by 15 March 2019. That date has now passed and Miss R hasn't responded. So I see no reasonable grounds to depart from my provisional decision.

my final decision

For the reasons I've given, my decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 21 April 2019.

Claire Jackson
ombudsman