

complaint

Ms B complains that NewDay Ltd didn't charge back a payment she made for goods that she didn't receive.

background

In March 2015 Ms B used PayPal to pay for a piece of furniture, using her Debenhams credit card. She says the item was due to be delivered within 12 weeks.

In mid-May 2015 Ms B contacted NewDay about the payment. She said she'd not been able to contact the seller. She thought it had gone into administration, but she hadn't received notice of this. NewDay's system notes say that the call ended with Ms B saying that she'd try to contact the seller again.

Ms B contacted NewDay again at the end of September 2015. She enclosed a copy of a letter dated a couple of weeks before, which she said had been delivered and signed for. In that letter, she asked NewDay to claim back the payment. She said she'd paid the money in good faith, but the seller hadn't delivered the goods. And she said that she'd hoped that the seller would contact her to arrange a refund, but he hadn't done so.

NewDay said the timescales for raising a chargeback had expired. And it couldn't make a claim under section 75 of the Consumer Credit Act 1974, as the transaction had been processed through PayPal, so the credit card provider and seller weren't in a direct relationship. It said the timescales for making a chargeback had already been exceeded when Ms B wrote to it in mid-September. But it paid her £10 to apologise for not having responded to the letter she sent in mid-September.

Ms B wasn't satisfied with NewDay's response. She said she only had confirmation in early June 2015 that the item wouldn't be delivered. So she couldn't have notified NewDay of this any earlier.

Our adjudicator recommended that the complaint should be upheld. She said she thought NewDay should have attempted a chargeback when Ms B contacted it in May 2015 and told it she hadn't received the item. And she thought it likely that the chargeback would have been successful. So she thought NewDay should refund the £1,000 to Ms B.

NewDay is unhappy with the adjudicator's view. It says Ms B hadn't received confirmation that the seller had gone into administration when she phoned it in May 2015. And it says it wouldn't have attempted a chargeback at that stage, as no delivery date had been given – so no delivery date had passed. It points out that Ms B says she first became aware that the goods wouldn't be delivered in early June 2015. But she didn't contact it until September 2015, by which time it was too late to make a chargeback.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've reached the same conclusion as the adjudicator.

NewDay doesn't have a recording of the call Ms B made to it in May 2015. I acknowledge that its note of the conversation finishes with Ms B saying that she'd try to contact the seller

again. So I accept that it may not have been appropriate to raise a chargeback claim straight away. But when the call took place around 11 weeks had already passed since Ms B made the payment. And I think it would have been clear from the call that there was a real risk that Ms B wouldn't receive the goods she'd paid for.

NewDay would have been aware of the time limits for making a chargeback claim. And I'd have expected it to tell Ms B about them. Had it done so, I think it likely that she'd have asked it to raise a chargeback sooner than she did. As it was, she contacted it within 120 days of the end of the 12-week period in which she says delivery was originally due. I have seen nothing to suggest that it's unlikely that a chargeback brought in time wouldn't have succeeded. So I find that NewDay should refund the £1,000 that Ms B paid for the item.

my final decision

My decision is that NewDay Ltd should pay Ms B £1,000.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 27 June 2016.

Juliet Collins
ombudsman