

Complaint

Mr J is unhappy with the service he's received from NewDay Ltd (NewDay). He feels NewDay hasn't been helpful in getting a deposit back from a car dealer, has been rude to him on the telephone and has blocked a payment on his card unnecessarily.

Background

Mr J has an Aqua credit card provided by NewDay. In June 2018 Mr J used his credit card to make a payment of £100 to a car dealer. He's explained he paid this sum as a deposit to ensure a car was held for him until he was able to view it. When Mr J viewed the car he was unhappy with its condition and decided not to buy it. He says the car dealer hasn't returned the £100 he paid and is unhappy because he feels NewDay didn't help him to recover it. Mr J also says NewDay was rude to him during telephone calls and blocked a transaction on his account, causing him inconvenience.

NewDay has explained it considered a chargeback claim. But decided not to go ahead with it because Mr J hasn't provided any evidence the deposit was refundable. So NewDay says the claim wouldn't be successful. It confirmed if Mr J could provide evidence the deposit should've been refunded by the car dealer, it would dispute the transaction on his behalf. It also said there was no evidence it blocked Mr J's card after the June 2018 transaction, or that its staff had been rude.

Our investigator investigated the complaint. He asked for call recordings to consider whether NewDay's staff members were rude to Mr J. NewDay wasn't able to provide recordings of all of its calls but agreed to pay £100 to Mr J to reflect any poor service, which the investigator thought was reasonable. He felt NewDay acted reasonably in not attempting to raise a chargeback claim against the merchant selling the car. The investigator referred to a blocked card in February 2019 and concluded NewDay hadn't done anything wrong.

Mr J didn't agree with the investigator and asked for his complaint to be reviewed by an ombudsman. He said NewDay should be made to provide all of its calls, his card was blocked in June/July 2018 without any contact with him and that he should be refunded the £100 deposit.

I issued my provisional decision on 27 November 2019. I separated the complaint issues and my findings related to each issue.

Chargeback claim

I said there was some confusion about the basis on which Mr J wanted his deposit refunded. He referred to section 75 (s.75) of the Consumer Credit Act 1974. The investigator said this didn't apply because Mr J didn't buy the car. I reviewed the available evidence and agreed that s.75 still didn't apply in this case. It only applied to payments which were over £100. For any claims to be considered under s.75, the amount claimed would need to be **over** £100 and no more than £30,000. In this case therefore, NewDay wasn't able to apply s.75 as the deposit payment was exactly £100 and **not over £100**.

I could see NewDay did consider whether to use the chargeback system. When a bank looks at whether to raise a chargeback for a customer, it first has to satisfy itself the payment being challenged is eligible for chargeback. To do this it has to look at the relevant rules that apply – in this case - Mastercard regulations. The card issuer – NewDay – checks the nature of the dispute against a list of possible chargeback reasons to see what evidence is

required, the timescales, and whether the claim could be successful. NewDay asks the cardholder – Mr J – for any relevant information.

Depending on the reason for the dispute, NewDay then has to use a chargeback reason code. Chargeback can be used when a business was meant to give a refund to a customer, but didn't. NewDay would have to use the relevant code for this as the chargeback reason. But NewDay doesn't have to raise a chargeback if it thinks there's no reasonable chance of success. In Mr J's case, I was satisfied NewDay acted reasonably in asking for evidence from Mr J to see if it could make a successful claim. This is because Mr J's chargeback was only likely to be successful if he could provide evidence his deposit was a returnable one. If the deposit was made on a non-refundable basis chargeback wouldn't be successful. Mr J hadn't provided this evidence, so I thought NewDay had acted reasonably in not raising a chargeback.

Service provided

The investigator asked for all the call recordings during the period of Mr J's complaint. However, NewDay hadn't been able to find all of the calls. We've listened to one of the calls but this wasn't a complete call. This was Mr J's call to NewDay on 13 July 2018 which provided a recording up to the point he was transferred. From what I heard, I didn't think the member of staff he spoke to was rude. I agreed with Mr J though this wasn't ideal. But NewDay had accepted that as it couldn't demonstrate staff members were polite it would compensate Mr J, which I thought was fair.

Blocked card

Mr J said a payment for around £3 was blocked by NewDay in June/July 2018 and this caused him inconvenience. Mr J provided a copy of his phone bill to show calls were made to NewDay in June and July 2018. As the calls were made over a year ago NewDay no longer had recordings of them. It provided system notes of the calls Mr J had highlighted though. From those notes I saw Mr J called NewDay on 26 June 2018 and discussed a cancelled direct debit. His next call, on 28 June related to his problems with NewDay, as did a call on 13 July. Having looked at those, there was nothing that suggested Mr J's card was blocked during this period. A block was however placed on the account in February 2019, but I understood Mr J accepted this and wasn't complaining about it. Given that I couldn't see NewDay placed a block on Mr J's account around June/July 2018, it followed that I wasn't persuaded it had done anything wrong.

In my provisional decision, I said I was minded to say that I was satisfied NewDay acted reasonably in not raising a chargeback and in awarding Mr J £100 in respect of the service it provided. I hadn't seen any evidence which suggested NewDay blocked Mr J's card apart from February 2019. So overall, I was minded to agree with the investigator that £100 compensation NewDay offered was fair and reasonable in the circumstances of this complaint. I didn't think NewDay needed to do anything more.

Mr J has responded. He didn't accept my provisional decision. In summary he said:

- NewDay should have told him right from the beginning it wouldn't raise a chargeback and then he would have complained directly to the dealer without waiting for 40 days;
- NewDay has chosen which calls to provide to this service;
- If I couldn't make NewDay provide all its call recordings, he shouldn't have to prove his deposit was refundable;
- NewDay only offered compensation after he brought his complaint to this service because it knows how we work;

- His card was blocked while he was in France. It worked at motorway tolls, but not in shops.

New Day hasn't responded to my provisional decision.

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. Having done so, I still think the offer of £100 is fair and reasonable and I won't be asking NewDay to do anything more. I'll explain further below.

Chargeback claim

I still think NewDay acted reasonably in not raising a chargeback claim, as there is no evidence the deposit was refundable. Without this evidence a chargeback claim would unlikely be successful. Mr J said NewDay should have told him to approach the dealer directly from the beginning. Having looked at NewDay's call notes made at the time, I'm satisfied NewDay did advise Mr J to approach the dealer directly. NewDay also told Mr J what evidence it would need to make a chargeback claim. So I can't see that Mr J has been misinformed.

Mr J says he shouldn't be asked to provide evidence that the deposit was refundable when NewDay hasn't provided a recording of all its calls with him. Both parties are required to provide evidence relating to the complaint issues and which we require as part of our investigation. NewDay has said the call recordings weren't available as they were older, and I have no reason to doubt this. I also don't consider NewDay's failure to provide a call recording has any bearing on the evidence Mr J needs to provide for NewDay to make a chargeback claim. They are separate issues. Mr J has been asked to provide evidence the deposit was paid on the basis it was refundable because without this evidence a chargeback claim is unlikely to be successful.

Service provided

In my provisional decision I said it was regrettable that NewDay was unable to provide the recording of the call in which Mr J says it was rude. But it still reviewed the circumstances and while the calls weren't all available, it decided to offer £100 to reflect any possible poor service he says he received. So I think this offer is fair based on the evidence available.

Blocked card

In my provisional decision I said there was no evidence NewDay had blocked Mr J's card. I said this after looking at Mr J's phone bill and NewDay's call records. On the days Mr J provided evidence he called NewDay, none of the calls related to a blocked payment. Mr J said in his response his card worked at motorway tolls but not in shops. I'm uncertain why this happened. I have nevertheless seen no evidence NewDay blocked Mr J's card.

Mr J has mentioned court action. This is a matter for him to consider if he wishes but is not something I need to comment on in this decision.

Conclusion

Having considered all the additional points raised I've reached the same decision I set out in my provisional decision. Whilst I'm sympathetic to the position Mr J finds himself in, I consider NewDay acted reasonably in not making a chargeback claim without evidence the deposit was refundable. I consider NewDay's offer to pay Mr J £100 is fair in the

circumstances of this complaint. I've also not seen any evidence to suggest Mr J's card was blocked. NewDay doesn't need to do anything further.

My final decision

For the reasons given above, the offer of £100 to settle Mr J's complaint against NewDay Ltd is fair and reasonable in the circumstances..

NewDay Ltd has offered to pay Mr J £100 as I've outlined above. I conclude that such an offer is fair compensation in the circumstances. My decision is that NewDay Ltd should pay any outstanding amount within 28 days of receiving notice of Mr J's acceptance of this decision. Mr J should note that if he accepts my decision, it will be legally binding on all parties and he probably then wouldn't be able to take legal action over this matter for additional compensation. If, however, he rejects the decision, although his legal rights will remain intact, it'll be purely a matter between him and NewDay Ltd as to whether the above offer still remains open for acceptance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 19 January 2020.

Nimisha Radia
Ombudsman