

complaint

Mr G complains that NewDay Ltd initially refunded £490.13 to his account after he asked it to do a chargeback but a few months later it then debited more than this from his account. He also complains that NewDay Ltd placed him on hold and said it would call him back but didn't do so.

background

The background to this complaint, and my initial findings on it, can be found in my provisional decision which is attached to and forms part of this final decision.

In my provisional decision, I explained why I wasn't proposing to uphold Mr G's complaint. I invited both parties to let me have any further submissions before I reached a final decision.

NewDay responded to my provisional decision and said it had nothing to add. Mr G also responded to my provisional decision. He reiterated his concerns that NewDay should honour the provision in his credit card statement that says *"if you purchase any items of goods or any services costing between £100 and £30,000 under this agreement you may have a claim against us as well as the supplier, if, for example, the goods fail to arrive or are not of satisfactory quality..."*.

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.

As neither party has provided any new or further information for my consideration, I see no reason to depart from the conclusions I set out in my provisional decision. I realise this is not the outcome Mr G had hoped for but it brings to an end what we, as an informal dispute resolution service, can do to help him.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 18 July 2020.

Michelle Hayward
ombudsman
copy extract of provisional decision

complaint

Mr G complains that NewDay Ltd initially refunded £490.13 to his account after he asked it to do a chargeback but a few months later it then debited more than this from his account. He also complains that NewDay Ltd placed him on hold and said it would call him back but didn't do so.

background

In May 2018 Mr G booked an overseas hotel using his NewDay credit card. It cost €560 – this was £490.13 when converted into sterling. The hotel room was booked and paid for through an online booking agent.

Mr G's flights were changed and this meant he arrived overseas much later than he originally expected. A relative let the hotel know he'd be arriving late but the hotel said check in was only between 4pm-7pm and it wouldn't allow a late check-in. When he arrived at the hotel the next day he found the gate was padlocked and he wouldn't have been able to walk up the dirt road to access it due to his disability.

Mr G says he only saw the booking summary after he returned to the UK and had he seen this he wouldn't have booked the hotel due to his disability. Mr G contacted the proprietor but told him to contact the booking agent and she then hung up. The booking agent was also unable to help so he asked NewDay for help.

In its final response letter NewDay confirmed it'd raised a chargeback for Mr G and credited his account. However, it later re-debited his account when the merchant challenged the chargeback. NewDay said the dispute was about the quality of services and the scheme rules didn't allow it to recover funds in these circumstances. It apologised for not returning Mr G's call. It upheld this part of his complaint and credited £15 to his account.

Mr G isn't happy with NewDay's response. He thinks NewDay should have helped him because his credit card agreement says *"if you purchase any items of goods or any services costing between £100 and £30,000 under this agreement you may have a claim against us as well as the supplier, if, for example the goods fail to arrive or are not of satisfactory quality or the supplier has made a representation you relied on about the goods which was not accurate"*.

He referred his complaint to our service. Our investigator didn't recommend that his complaint should be upheld. He explained that our role is to look at whether his chargeback request was processed correctly by NewDay.

Our investigator didn't think Mr G could say that he'd failed to receive goods or services or that the goods or services weren't of satisfactory quality because he never stayed at the hotel. And the investigator didn't think Mr G had provided any evidence that the hotel had been misrepresented.

Our adjudicator thought NewDay had treated him fairly – it'd raised a chargeback for him and credited £490.13 to his account but it later re-debited his credit card account when the chargeback was challenged by the merchant.

In terms of NewDay debiting his account by more than the original cost of the hotel booking, our investigator explained that this was due to changes in the euro/GBP exchange rate. He noted that NewDay had agreed to refund this amount so he thought this was fair.

Mr G was unhappy with the investigator's view. He explained why the hotel wasn't satisfactory or as described. I've summarised his concerns and the investigator's response in italics:

- he provided a third party review of the hotel which stated that the room didn't have a view and the breakfast wasn't exceptional as advertised. *Our investigator looked at other reviews and noted they were a mixture of positive and negative. Our investigator explained that negative reviews from a third party aren't sufficient to justify a chargeback request.*
- he told us he didn't get the information about the hotel's check in times until after he'd returned to the UK. *Our investigator thought it unusual for hotel details to be sent after the date of the proposed stay. The investigator couldn't say that Mr G was only told about the restricted check in times after he returned because the email from the booking agent was a forwarded email and it didn't show the original date it was sent. As the hotel indicated its*

check in times in the booking email the investigator didn't think it had done anything wrong by restricting access outside those times.

- he told the hotel his mobility was limited - and he only discovered that access to the hotel was via a dirt road when he was unable to access due to his disability when he arrived. Our investigator didn't think the information he'd provided to the hotel about his limited mobility was enough for the hotel to know he wouldn't be able to go up the dirt road.*
- he says photos on the hotel booking website are different to the actual hotel. Our investigator didn't agree and he couldn't see that the dirt road had been shown on the website photos.*

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 must explain that my role isn't to look at Mr G's underlying concerns about the hotel he booked. Instead, my role is limited to looking at whether NewDay treated Mr G fairly when he asked it to help him.

There are generally two routes available to a customer seeking to recover a payment made on a credit card. Firstly they can make a claim under section 75 of the Consumer Credit Act (Act) or they can ask the financial business concerned to make a chargeback request. In Mr G's case, NewDay attempted a chargeback for him and it didn't make a section 75 claim.

I've therefore thought about whether NewDay should have brought a section 75 claim.

section 75

Section 75 broadly provides that if certain conditions are met, a provider of credit is jointly and severally liable for a breach of contract or misrepresentation by the supplier. The wording Mr G has referred us to in his credit card agreement is referring to section 75.

I don't think section 75 was available to Mr G. Firstly I'm not persuaded that there was a breach of contract or misrepresentation here. I don't consider it necessary to dwell on this aspect because there's another reason why I don't think a claim under section 75 was available in Mr G's circumstances – and without which it wouldn't be possible for NewDay to bring this type of claim.

For there to be a valid section 75 claim there needs to be what is known as a "debtor- creditor-supplier" relationship between the parties. Here, the debtor would be Mr G, the supplier is the hotel and the creditor, NewDay.

Mr G booked his hotel through an online booking agent to whom he made the payment. This broke the debtor-creditor-supplier relationship because the Act requires that payment for goods or services has to be made directly to the supplier. Here the payment was made to the third party booking website. The booking website is not the supplier as it acts as an intermediary. The hotel is the supplier as it is providing the accommodation.

The debtor-creditor-supplier chain required by the Act isn't discretionary. Without it, a credit card provider is entitled to decline a claim. The involvement of the third party booking website, to which the credit card payment was made, broke this debtor-creditor-supplier relationship so I don't think it treated Mr G unfairly by not bringing a section 75 claim for him.

chargeback

Chargeback is a process provided by Mr G's card scheme - in this case MasterCard. It allows customers to ask for a transaction to be reversed in a number of situations including where goods or services aren't provided, where goods or services are defective or where goods or services aren't as described.

There's no automatic right to a chargeback. Nor is chargeback a guaranteed method of getting a refund because chargebacks may be defended by merchants. If a financial business thinks that a claim won't be successful, it doesn't have to raise a chargeback but where there's a reasonable chance of success we'd expect a financial business to bring a chargeback.

I should also explain that it isn't NewDay that decides whether or not a chargeback is successful. That's a decision made by Mastercard and not something I can consider here. If Mastercard decides that the chargeback has been successfully defended by the merchant, then the business must re-debit the amount from the customer's account. I can only consider NewDay's actions in requesting the chargeback here.

The information I've seen shows that NewDay initiated a chargeback for Mr G on the basis that he never received the hotel services – and I've seen that Mr G signed NewDay's declaration confirming this. NewDay initially credited his account as I'd expect it to but then debited his account in September 2018 when the merchant challenged the chargeback. I can't say that NewDay treated him unfairly because a financial business isn't obliged to continue with a chargeback in circumstances where the chargeback has been defended by a merchant.

NewDay's notes show the chargeback was defended by the merchant because Mr G agreed to the merchant's booking terms and conditions and these detailed the hotel's check-in times. NewDay said in its final response letter that it therefore thought Mr G's dispute was about the quality of the hotel and this wasn't covered by Mastercard's scheme rules.

I don't agree. I think Mastercard's rules do allow a chargeback to be made where goods or services are defective or where goods or services aren't provided as described — but I can't say that Mr G lost out because of this. I'll explain why.

If NewDay had raised a chargeback for Mr G on the basis that the hotel room or services were defective I think it's more likely than not that there was no reasonable prospect of the chargeback succeeding and that it would have been defended by the merchant. I say this because, as the investigator already explained, I don't think Mr G can say the hotel room or the services were defective when he never stayed there.

The information I've seen shows that he didn't stay at the hotel because he wasn't able to check-in within the hotel's stated check-in times. I appreciate this was due to his flights being changed and I sympathise. However, I think the booking confirmation made clear that the check in times were restricted and I'm not persuaded that he only received the booking confirmation detailing the check-in times until after he returned to the UK.

Mr G also thinks the hotel wasn't as described by the booking agent because the approach wasn't suitable due to his disability and because the photos on the website aren't the same as when he arrived at the hotel.

I appreciate it must have been disappointing for him to find the hotel wasn't suitable due to his disability but he found this out the day after he'd failed to check-in by the stated times so I'm not persuaded that the hotel was wrong to restrict access after this. If I'm wrong on this, I haven't in any event seen anything to suggest the hotel was advertised by the booking agent as accessible. I appreciate Mr G says he told the hotel he required a bath because he couldn't shower and he asked for a downstairs room because he couldn't carry luggage upstairs but I agree with the investigator that this wouldn't be enough for the hotel to know he wouldn't be able to get up the unpaved road.

The photos on the website show the hotel and its grounds. The unpaved road leading up to the hotel isn't shown in the photos and as I haven't seen anything to suggest that the hotel was described by the booking agent as suitable for those with restricted mobility or that Mr G made his particular mobility issues known, I can't agree that the hotel wasn't as described by the booking agent.

I've already explained above that a chargeback isn't a consumer right and before agreeing to do a chargeback a card issuer is entitled to take into account whether it has a reasonable chance of success. For the reasons given above I can't say that Mr G lost out as a result of NewDay not initiating a chargeback on the basis that the hotel was defective or that it wasn't as described because I think it had little chance of success. I therefore think NewDay treated him fairly but I appreciate he will be disappointed by my decision.

NewDay debited Mr G's account by £500.78 in early September 2018. I appreciate this was for more than the cost of the original booking. NewDay explained this was due to changes in exchange rates. I can see that NewDay subsequently refunded this difference so I think this was fair. And I also think the £15 compensation offered by NewDay for its failure to return Mr G's call is fair and reasonable.

my provisional decision

My provisional decision is that I am not intending to uphold this complaint unless I receive further information from the parties that causes me to change my opinion.

Michelle Hayward
ombudsman