

complaint

Mr S complains that NewDay Ltd declined a charge back request and a claim under Section 75 of the Consumer Credit Act 1974 (CCA 1974), to refund the cost of an item he didn't receive.

background

Mr S placed an order for a watch in March 2018; he paid £453.98 on his credit card. Mr S signed for the parcel that he picked up from a collection point. But Mr S says that when he opened the parcel at home the box was unsealed and empty. He wants NewDay to refund him the cost of the watch.

Mr S was unable to resolve this with the supplier, who advised him to report the matter to the police, so he got in touch with NewDay to refund his money either under the chargeback scheme or under a Section 75 claim under the CCA 1974.

NewDay attempted a chargeback and credited Mr S' account with the cost of the watch. However, the chargeback wasn't successful and NewDay reversed the refund. It also rejected Mr S' Section 75 claim as the supplier had confirmed the parcel was the correct weight at the point of delivery, so it didn't think there had been a breach of contract.

Mr S complained about the outcome of his claims to NewDay. He was also unhappy with the standard of service received during a call. NewDay said it handled the chargeback and Section 75 claim correctly. But it apologised and paid Mr S £50 for the poor service received during a call.

Unhappy with NewDay's response Mr S brought his complaint to our service. Our investigator didn't recommend the complaint should be upheld. He didn't think NewDay had done anything wrong.

Mr S disagreed, he said that NewDay had relied on what the supplier had said about the weight of the item at delivery, but didn't have any evidence to support it. He asked for an ombudsman to make a final decision.

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'm not upholding this complaint and I'll explain my reasons below;

There are two ways that a bank can try to help a customer recover money paid on a credit card. The first way is under the chargeback scheme, the rules are set out by the relevant card scheme, in this case MasterCard and the other method is under Section 75 of the CCA 1974.

NewDay processed a chargeback, but this was defended by the supplier who provided evidence to show that Mr S had failed to meet its terms and conditions for a refund, by not returning the empty box as requested. The information received from the supplier was sufficient for NewDay to believe that the chargeback wouldn't be successful, so under the terms of the scheme it didn't need to pursue the chargeback further. So, I don't think NewDay made a mistake by reversing the chargeback.

NewDay also considered whether Mr S had a valid Section 75 claim under the CCA 1974. Section 75 allows a customer to claim from their credit card company, a refund of money paid to a supplier in specific circumstances. There needs to be enough evidence to show the supplier;

- said something about the goods/services being sold that wasn't true; and this made the customer enter the contract (misrepresentation); or
- had broken the terms of the contract.

My role isn't to decide whether Section 75 applies here. Rather I need to think about whether NewDay made a mistake in the way it considered Mr S' Section 75 claim. As there is nothing to suggest a misrepresentation took place, I've considered a breach of contract.

If a supplier fails to deliver an item paid for by customer, then this would be a breach of contract.

Mr S ordered a watch to be delivered to a local collection point, but he says he only received an empty box. In an online chat with Mr S the supplier says *"I'm afraid after the investigation it was showing that the order was delivered with the correct weight of the item inside"*.

This service and Mr S have requested evidence from the supplier to confirm the weight of the parcel at delivery. The supplier hasn't provided this.

Mr S says that it was wrong for NewDay to rely on what the supplier had said, as it had not provided any proof to confirm the parcel was at the correct weight when it was delivered. However, I don't think the fact that this evidence is missing should mean Mr S' complaint should succeed. Where evidence is missing, like it is here, we make a decision based on what we think is most likely to have happened, taking all the surrounding circumstances into account.

Mr S says he received an empty box and I don't disbelieve him; on the other hand the supplier says that the parcel was the correct weight when it was delivered to the collection point, equally I have no reason to doubt this.

From the information we do have, I think it is more likely than not, that the watch went missing after it was delivered to the collection point, as the supplier has confirmed the parcel was the correct weight at the point of delivery. Mr S opted for his parcel to be delivered to a collection point, so in accordance with its terms and conditions it was responsible for delivering the parcel there, so I can't fairly say the supplier was responsible for what may have happened after it was delivered to the collection point.

I appreciate that Mr S will be disappointed with my decision, but I don't think there is enough evidence to show that there has been a breach of contract by the supplier, so I don't think NewDay did anything wrong in handling his Section 75 claim. The supplier previously offered to review Mr S' refund if he reported the matter to the police, I now leave it to Mr S to decide if he now wishes to contact the supplier to see if this offer is still available.

NewDay accepts that in a call in June 2018 Mr S was given incorrect information about why the chargeback credit had been reversed. It also agreed that Mr S hadn't received the standard of customer service he should have expected. It apologised and paid Mr S £50 in

recognition of this; in the circumstances I think this is fair and I don't think it needs to do anything else.

my final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 19 August 2019.

Karen Dennis-Barry
ombudsman