

complaint

Mrs D complains that NewDay Ltd has made two payments from her Debenhams credit card without proper authority and won't refund them.

background

Mrs D signed up for a free trial of a cosmetic product. Two weeks after she did so, the seller of the product took two payments – for £86.85 and £87 – from her credit card. Mrs D contacted NewDay to say that she hadn't agreed to the payments being taken from her account. NewDay stopped any further payments being made but said that the payments had been properly taken under a continuous payment authority.

Mrs D didn't accept what NewDay said and brought the complaint to us. Our adjudicator said that NewDay should refund the payments. The seller's terms and conditions said that it would take the payments if Mrs D didn't tell it not to; they also said she should do so before the end of the free trial. But the adjudicator felt that the information about the payments wasn't clear or prominent – in line with regulatory guidelines.

NewDay didn't agree with the adjudicator's conclusions and asked that an ombudsman consider the matter.

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 conclusions as the adjudicator did, and for the same reasons.

The adjudicator accepted that the seller's terms said that it would take payment if Mrs D didn't cancel her orders within the trial period. But he also referred to – and quoted in some detail – the relevant regulatory guidance and legislation. He said that the guidance required notification of payments like these to be clear and prominent. He didn't think that it was in this case.

NewDay didn't really answer that point though. It just referred back to the seller's website and conditions.

NewDay has debited Mrs D's account with the payments; so it must show that she gave proper authority for them. Having in mind the guidance to which the adjudicator referred, I don't think it's done that. The guidance addresses precisely the situation here – where information about card payments is hidden in terms and conditions, so that the customer won't appreciate what they're agreeing to pay and when. I think the adjudicator was right to conclude that Mrs D didn't give proper authority here.

my final decision

My final decision is that NewDay Ltd should credit Mrs D's account with the two payments that gave rise to this dispute. It should back-date the payments so that Mrs D gets back any resulting interest or charges as well.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs D to accept or reject my decision before 24 March 2015.

Michael Ingram
ombudsman