

The complaint

Mrs B complains NewDay Ltd trading as Debenhams Gold Mastercard (“NewDay”) failed to recover funds for goods paid for in part using her NewDay credit card.

What happened

In February 2023 Mrs B used her credit card to part pay for a building extension on her home. She paid an instalment of £3,000 but has said this payment was part of a larger contract of work for £75,000. In May 2023 she says the work started to slow and on 12 July 2023 she notified the builders that she would be cancelling the contract for their services as they had not delivered on time or in full.

Mrs B says she then contacted NewDay on 20 September 2023 to recover the £3,000 paid using her credit card. NewDay considered a claim under s.75 of the Consumer Credit Act 1974 but concluded that the total cost of the work was above the financial limits for this claim. In addition, NewDay considered a chargeback. However, chargeback have strict timeframes and NewDay concluded Mrs B had raised the dispute outside the relevant time limits. Mrs B was unhappy with NewDay’s attempts to recover the money paid and raised a complaint which she subsequently referred to our service.

One of our investigators considered the complaint and didn’t uphold it. She agreed that the total cost for the work was outside the financial limits for a s.75 CCA claim. She also thought the chargeback had been raised too late. She explored a number of arguments raised by Mrs B but ultimately found that the chargeback was raised outside the time limits set by Mastercard. Mrs B didn’t agree and as an agreement couldn’t be reached the complaint has been passed to me.

I issued a provisional decision setting out why I intended to uphold the complaint. In my provisional decision I said:

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

I’ve read and considered all the information I’ve been provided with about this complaint, but I’ll concentrate my comments on what I think is most relevant. If I don’t comment on a specific point or piece of evidence it’s not because I’ve not considered it, but because I don’t think I need to comment on it in order to reach a fair and reasonable decision. Our rules allow me to do this and this reflects the free informal nature of this service as an alternative to the courts.

s.75 CCA claim

When something goes wrong with goods or services and the payment was made, in part or whole, with certain types of credit, it might be possible to make a s.75 CCA claim. This section of the CCA says that in certain circumstances the borrower under the credit agreement can make a like claim against the credit provider, as they can against the supplier, if there’s been a breach of contract or misrepresentation.

There are certain criteria which need to be fulfilled in order to make a s.75 CCA claim. One of which is that the “cash price” of the goods or services needs to be more than £100 but no more than £30,000. Both parties agree a s.75 claim can't be made in relation to this payment as the total cost of the building works was £75,000. So I don't think NewDay has done anything wrong in explaining it cannot pursue a s.75 CCA claim.

Chargeback

A chargeback is the process by which payment settlement disputes are resolved between card issuers and merchants, under the relevant card scheme rules. It allows customers to ask for a transaction to be refunded in a number of situations, some examples being where goods or services aren't provided, where goods or services are defective, or where credit is not processed (i.e. a refund isn't processed).

There's no automatic right to a chargeback; the chargeback process doesn't give consumers legal rights; and chargeback is not a guaranteed method of getting a refund because chargebacks may be defended by the merchant. This is because the rules, set out by the card scheme lay down strict conditions which must be satisfied for a chargeback claim to succeed. 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, I'd expect a financial business to raise a chargeback.

I think it's fair to say that this chargeback request wasn't clear cut. In this case there were two chargeback reason codes which NewDay could have used – goods and services not provided or credit not processed.

Under credit not processed the cardholder (Mrs B) needs to have claimed the merchant has not responded to the return or cancellation of goods or services. Mrs B has said that from May 2023 the work began to stall and on 12 July 2023 she notified the builders that she would be cancelling the contract for their services as they had not delivered on time or in full. Mrs B has also said the builders have failed to engage in further communications. Mrs B has provided a copy of text messages between herself, her husband and the builders where Mr B outlines that they have lost confidence in the builders and will be bringing in alternative builders to complete the work – therefore effectively cancelling the contract.

I think reasonable enquiries from NewDay would've uncovered that Mr and Mrs B went onto cancel the contract and it's clear from the notes available that NewDay has provided that it was aware Mrs B had needed to get in new builders to complete the work. So whilst NewDay had concluded that Mrs B was too late to raise a chargeback under goods and services not provided, there was another chargeback reason code it could have explored which would've allowed for different time frames.

Looking at the chargeback rules for credit not processed this needs to be raised “*between 15 and 120 calendar date from... the date the service was cancelled*”. The service was cancelled on 12 July 2023 and the chargeback was raised with NewDay on 20 September 2023. So I think the dispute was raised in time and NewDay had sufficient time to gather the relevant information needed and still comply with the time frames.

However, for this chargeback reason to apply I need to be satisfied that the payment of £3,000 was a payment towards the completion of the whole contract rather than for a specific part (which potentially could have been completed and therefore not cancelled). Looking at the terms of the contract I can see payments are due at a number of different points e.g. “*when footings dug £4,000*” or “*when footings completed £5,000*”. The contract states that the payments listed are “stage payments” and are “*not relative to each stage*”. In addition, there is a £6,000 payment detailed as “*2 weeks prior to start*” with no details about what this relates to. So it seems to me that the payments are due at specific points in the build and are not specific to that work being completed. It is therefore very difficult to attribute the £3,000 payment to a specific service (or materials related to that service) and it has to be treated as part payment towards the overall contract.

So to summarise, I think the £3,000 would need to be considered as part payment towards the overall contract given the terms of the contract and how the payment schedule is set out. The overall contract was cancelled on 12 July 2023 and so a chargeback for credit not processed could have been raised within the relevant time frames by New Day as Mrs B contacted NewDay within 120 days of cancelling the contract.

I now need to consider if the chargeback had a reasonable prospect of success. This presents a number of challenges particularly given the chargeback wasn't raised so I don't know what the merchant response would have been. It's clear from the text message evidence that the work stalled, as Mrs B said. In the message sent cancelling the contract (written by Mr B) it states that there has been no progress in seven weeks and "*the actual build work is only around a third complete*". This message references a number of milestones which weren't achieved such as no glass in the doors, no insulation in the roof and rubbish at the front of the house. It also referred to a lack of communication from the builder and states that they have paid around two thirds of the cost but only been provided with around a third of the build. Mrs B has also presented a number of online reviews about the builders in question suggesting other customers have had similar experiences to Mrs B. This lends some additional weight to the assertions she has made about the builders in question.

Furthermore, Mrs B has provided a copy of the quote from her subsequent builders to finish the work and rectify the issues caused by the previous building work. This shows a cost of over £52,000 to complete the work. Mrs B claims that at the time of cancelling the contract in question she had paid £49,000 of the £75,000 total cost. So given that over £52,000 was needed to rectify and complete the work, and in the context of everything else Mrs B has provided, I think it's likely there was substantial work outstanding relative to what Mrs B had paid for. I have noted that Mrs B has had another successful chargeback for £17,000 in relation to another payment towards this contract on a separate credit card. However, I still think it's likely that at least another £3,000 would've been due back to Mrs B. This would take the total refund to £20,000 (£17,000 + £3,000) against a total payment of £49,000 so Mrs B has still paid £29,000 towards the work. This is over a third of the original cost and Mrs B states that only around a third of the work was completed. In addition, the cost to repair and finish the work from the subsequent builder was over £52,000 (and Mrs B has told us they had additional costs of around £6,000). Even taking the lower figure, the total cost to Mrs B (excluding the £17,000 chargeback and the £3,000 chargeback in dispute) would be over £81,000 and is in excess of the original quote. So in the round, I think these points demonstrate that at least another £3,000 would have been due back to Mrs B.

Taking all this into consideration I think that Mrs B's chargeback was raised with NewDay in time and I think it had a reasonable prospect of success. So I think Mrs B has lost out by NewDay's decision not to raise the chargeback and it should compensate her for this.

I asked both parties to provide me with anything further they would like me to consider. Both parties responded to acknowledge my provisional decision, however neither party provided any further information.

What I've decided – and why

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, as neither party has provided anything further for me to consider, I see no reason to depart from the findings reached in my provisional decision (which forms part of this decision). So it follows that I uphold this complaint. To summarise I think NewDay could have raised a chargeback on Mrs B's behalf, and I think it had a reasonable prospect of success. So I think Mrs B has lost out as a result of this and NewDay need to compensate her for this.

Putting things right

In order to put things right NewDay should:

- Credit £3,000 onto Mrs B's credit card from the date NewDay declined the chargeback and rework the account accordingly until the date of settlement.
- If at any point the account is in credit, pay Mrs B 8% simple interest on that amount. If NewDay deducts tax from the interest element of this award, it should provide Mrs B with the appropriate tax deduction certificate.

My final decision

For the reasons explained above and in my provisional decision I uphold this complaint against NewDay Ltd trading as Debenhams Gold Mastercard. And I require it to put things right in the way I've described above.

Claire Lisle
Ombudsman