

## **The complaint**

Mrs G complains that NewDay Ltd have rejected her claim under section 75 of the Consumer Credit Act (1974).

## **What happened**

In February 2019, Mrs G says she made a purchase for two items from a supplier, I will call "D", using her store card. Mrs G says one of the items she received was incorrect so she returned it to D. The total cost of both items was £105.30. But it seems the cost of the incorrect item which Mrs G says she returned was £81.31 and Mrs G has asked for a refund for this item.

Mrs G complained to NewDay. They said D never received the returned item, so they weren't prepared to reimburse Mrs G. However, NewDay credited Mrs G's account with £15 as a gesture of goodwill for any inconvenience caused.

Unhappy with NewDay's response, Mrs G brought her complaint to our service. Our investigator looked into Mrs G's concerns. He explained the cost of the incorrect item didn't meet the financial limits as set out in section 75. Therefore, our investigator concluded that NewDay hadn't acted unfairly in the way they handled Mrs G's claim. Mrs G disagreed. So, the complaint has been passed to me.

## **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.

I have to decide what, if anything, NewDay should do to resolve Mrs G's complaint. To do that, I have to decide what I think is fair and reasonable, having regard to (amongst other things) any relevant law. In this case, relevant law includes section 75 of the Consumer Credit Act 1974 (CCA).

Section 75 of the CCA says that in certain circumstances the credit card account holder has an equal right to claim against the credit card provider if there's either a breach of contract or misrepresentation by the supplier of goods or services. So, in Mrs G's case, section 75 of the CCA makes NewDay responsible for a breach of contract or misrepresentation by the supplier under certain conditions. One of those conditions is that there must be a direct relationship between the debtor (Mrs G) the creditor (NewDay) and the supplier (D). Having considered everything, I'm satisfied that the necessary relationship exists.

But there are financial limits. The legislation states section 75 doesn't apply where *"the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000"*.

Both parties haven't been able to provide me with an order confirmation of the two products Mrs G purchased. However, I can see from her account statement that Mrs G paid one single amount of £105.30 for both of the items she ordered.

From the information I have, it appears that the cost of the item Mrs G says she returned but hadn't received a refund for was £81.31. Therefore, as the cost of this item was less than £100, section 75 doesn't apply in Mrs G's case. And as such, I don't think NewDay have treated Mrs G unfairly or unreasonably when they declined her section 75 claim, albeit they did so for different reasons.

### **My final decision**

For the reasons I've explained, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 9 December 2020.

Leanne McEvoy  
**Ombudsman**