

The complaint

Ms H complains that NewDay Limited won't refund to her the money that she paid for a sofa and about the customer service that she's received.

What happened

Ms H used her NewDay credit card in December 2018 to pay £1,397.25 to a retailer for two sofas. She found a fault with one of the sofas in August 2019 so complained to the retailer. It said that the sofa couldn't be replaced but would honour the same price if she ordered replacements and that the price of the faulty sofas would be refunded after they'd be collected. There were two failed collections in October 2019 before the sofas were collected in November 2019 and Ms H complained to NewDay that month because she hadn't received the refund.

It asked Ms H to provide further information about the refund so that it could try to trace it but contacted the retailer and found out that it hadn't processed the refund. The retailer offered to pay the refund to Ms H by other means and to pay her £250 compensation but she didn't accept its offer and wanted NewDay to refund the payment to her credit card account. NewDay offered to pay £20 to Ms H because of the phone calls that she'd made to it but she didn't accept its offer.

Ms H complained to this service but our investigator didn't recommend that her complaint should be upheld. She said that she couldn't hold NewDay liable for Ms H not accepting the retailer's offer of a refund and compensation and she couldn't say that NewDay had acted unfairly or unreasonably in dealing with Ms H's complaint. She thought that the compensation offered for the phone calls was fair and reasonable and she explained the position with the account statements that Ms H had complained about. Ms H says that she still hasn't received the refund and the retailer has stopped trading.

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, I agree with the conclusions reached by the investigator for these reasons:

- it's clear that there was a delay in the refund being processed and Ms H complained to NewDay – but the retailer confirmed that it would pay the refund by other means and offered Ms H £250 compensation – I consider that to have been fair and reasonable but Ms H didn't accept it and wanted NewDay to refund the payment to her credit card;
- in certain circumstances, section 75 of the Consumer Credit Act 1974 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier;
- to be able to uphold Ms H's complaint about NewDay, I must be satisfied that there's been a breach of contract or misrepresentation by the retailer and that NewDay's

response to her claim under section 75 wasn't fair or reasonable – but I'm not determining the outcome of Ms H's claim under section 75 as only a court would be able to do that;

- the retailer offered to pay the refund and compensation to Ms H so I'm not persuaded that there's been a breach of contract or misrepresentation by the retailer which would give rise to a claim against NewDay under section 75 – and for that reason I consider that NewDay's response to Ms H's claim has been fair and reasonable;
- if Ms H now wants to accept that offer, I suggest that she contacts the retailer – the retailer has stopped trading so it may not pay the refund to her but if that happens she may be able to make another claim to NewDay under section 75 because of the retailer's breach of contract in not paying the refund to her – and then, if she's not satisfied with NewDay's response, she may be able to make another complaint to this service;
- I sympathise with Ms H for the issues that she's had with the sofas and the refund, and it's clear that she feels very strongly that she's received poor service from NewDay in connection with her section 75 claim, but I'm not persuaded that there's enough evidence to show that its customer service has fallen below a reasonably acceptable standard in these circumstances; and
- NewDay has offered to pay Ms H £20 because of the phone call that she made to it – if she now wants to accept that offer I suggest that she contacts NewDay to see if the offer remains available to her – but I'm not persuaded that it would be fair or reasonable for me to require NewDay to refund to Ms H the money that she paid for the sofas, to pay her any compensation for the customer service that she's received or to take any other action in response to her complaint.

My final decision

My decision is that I don't uphold Ms H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 24 March 2021.

Jarrod Hastings
Ombudsman