

The complaint

Mr O complains that NewDay Ltd unfairly refused the claim he brought under section 75 of the Consumer Credit Act 1974. This was in relation to unfair charges that had allegedly been charged to his credit card. He wants compensation for consequential losses.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts are not in dispute, so I'll focus on giving the reasons for my decision.

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 our investigator. I'll explain my reasons.

I empathise with Mr O and I accept that it would've been upsetting and frustrating to have payments charged direct to his account without justifiable cause.

I think it's important to set out my role here. In considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under Section 75. Rather, I'm deciding what's a fair way to resolve Mr O's complaint. I have to take account of relevant law but I don't directly apply the law. Section 75 is relevant law.

In summary, in some limited circumstances, Section 75 gives a consumer a like claim against the provider of finance as they would have against the supplier of the goods or services about which complaint is brought. It requires there to have been a misrepresentation or breach of contract by the supplier. Here the alleged breach of contract is the application of unjustified charges to Mr O's account with NewDay.

I think it's important to understand that any liability that NewDay might have incurred under section 75 would result from the actions of the vehicle hire company, a business I'll refer to as "E". Mr O tried to obtain information from E but was seemingly met with an inadequate response. Although he received a partial refund from E, NewDay turned down his claim as it said it hadn't been provided with sufficient information to show that E had been in breach of contract.

I accept that Mr O found himself in a difficult position. On the one hand he faced a business which wasn't supplying the information he sought. And on the other, he was being told by NewDay that without this information it couldn't accept there'd been a breach of contract.

Mr O decided to take matters forward by issuing court proceedings against E. His claim to the court included 700 Euros (which was refunded before the hearing by E); 544.76 euros (the balance of the disputed amount); £30.31 credit card fee; 25 euros court claim fee and interest.

I've seen that a court gave judgment in his favour against E and awarded him 544.76 euros.

Mr O is now seeking consequential losses in the form of the court claim fee, interest charges and currency exchange losses.

The claim that Mr O made to the court included the amounts he now seeks to recover from NewDay. Had the court determined that it was appropriate to award these amounts it would no doubt have done so.

This service isn't able to change a court decision. And that would include filling in any perceived gaps in the decision. So I can't uphold Mr O's complaint on these issues. A court has dealt with Mr O's claim for breach of contract against E. NewDay can't be held liable for any losses allegedly arising from the same breach which the court didn't award.

Mr O brought his complaint to NewDay in October 2019. It responded in a letter dated 22 November 2019 stating that it wouldn't be upholding the complaint due to the lack of information. That letter informed Mr O of the type of evidence he'd require to further his claim. Which was in the form of a damage invoice. It also advised where that information might be located. I think that by informing Mr O of what it required, NewDay tried to offer reasonable assistance. Mr O then issued his court claim in December 2019.

Subsequently, NewDay issued a final response letter on 17 March 2020 repeating the reasons why it had been unable to uphold Mr O's complaint. The court gave judgment for Mr O against E on 24 March 2020.

I don't think that NewDay can reasonably be criticised for seeking some evidence – in addition to Mr O's account of circumstances – to allow it to determine if there had been a breach of contract by E. And its response which informed Mr O of this wasn't unreasonably delayed. After that, events were overtaken by the court proceedings.

In summary, Mr O was entirely within his rights to take court action against E. But that was a choice he exercised personally. And as a court has dealt with the breach of contract by E, any liability that NewDay might have had in relation to that breach under Section 75, has been determined by that judgment. As I've already stated I'm unable to do anything which would have the effect of altering that judgment.

I'm also satisfied that NewDay investigated Mr O's complaint properly. And that its decision not to uphold it due to the lack of information was justified. Accordingly, I'm not upholding this complaint.

My final decision

For the reasons given above my final decision is I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 4 May 2021.

Stephen Ross
Ombudsman