

The complaint

Mr M complains that NewDay Limited won't refund to him the amount that he's claimed for some building works. His wife is also involved in his complaint.

What happened

Mr M entered into a contract for some building work at his home which had a total price of £45,800. He signed a contract with the builder in November 2019. He says that he's paid a total of £39,950 to the builder – which included four payments totalling £25,950 between December 2019 and February 2020 using a credit card with another credit provider and then two payments of £5,000 each in March 2020 using his NewDay credit card.

There were issues with the building work so he complained to the supplier and Mr M says that the building work stopped when the government imposed restrictions in response to the pandemic in March 2020. He says that he then contacted trading standards and a citizens advice bureau and was advised that he could make a claim to NewDay under section 75 of the Consumer Credit Act 1974.

Mr M says that he made a claim to NewDay in November 2020 but it says that he made a section 75 claim to it in January 2021 and asked it to refund £30,000 of the money that he'd paid to the builder. It said that section 75 only applies to claims for transactions of a minimum value of £100 and a maximum value of £30,000 – and, as the contract was for £45,800, Mr M's claim doesn't fall into the criteria for a section 75 claim. It apologised that one of its advisers had told Mr M that his claim could be considered and credited his account with £85 for the upset caused.

Mr M wasn't satisfied with its response so complained to this service. Our investigator didn't recommend that his complaint should be upheld. He said that, although Mr M hadn't paid the full amount of the contract price, the contract price needed to be between £100 and £30,000, for a section 75 claim to be made - but the contract price was £45,800 so it was clear that the contract price was over the statutory limits for a valid section 75 claim. He also said that Mr M didn't notify NewDay of his claim until November 2020 and he thought that Mr M would have been out of time to bring a chargeback claim by then.

Mr M's wife, on his behalf, has asked for this complaint to be considered by an ombudsman. She has described Mr M's health issues which she says have been caused by the stress of this situation and she says that the advice given by trading standards and the citizens advice bureau was that this service has jurisdiction to look at what's right and fair.

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:

- 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;

- one of those circumstances is that the cash price that the supplier has attached to any single item must be at least £100 and not more than £30,000;
- the contract for the building work had a total price of £45,800 – it was a single contract for the work and I consider that the builder had attached a single price for the work of £45,800 which is more than the maximum limit for a claim under section 75;
- NewDay has accepted that it gave incorrect information about the claim to Mr M – and it's apologised for that and credited his account with £85 to compensate for the upset caused - which I consider to be fair and reasonable in these circumstances;
- I consider that NewDay has correctly said that Mr M's claim doesn't fall into the criteria for a section 75 claim;
- our investigator also considered whether NewDay should have made a chargeback claim for the payments that Mr M had made to the builder;
- if a consumer disputes a card payment, the card issuer may be able to make a chargeback claim to the merchant under the relevant card scheme to try to settle the dispute;
- there's no right for a consumer to require that a chargeback claim be made and the applicable scheme rules set out the disputes that can be considered and the time limits for making a claim;
- Mr M made payments to the builder using his NewDay credit card in March 2020 but he didn't contact NewDay about those payments until November 2020 at the earliest, about eight months later – I consider that the time limit for making a chargeback claim would have expired by then and that there was no reasonable prospect of such a claim being successful in these circumstances;
- I don't consider that there was any requirement for NewDay to make a chargeback claim for the payments that Mr M had made to the builder and I'm not persuaded that it acted unfairly or unreasonably in not doing so; and
- I sympathise with Mr M for the health issues that he's suffering and for the issues that he and his wife have described with the building works, but I'm not persuaded that it would be fair or reasonable for me to require NewDay to refund to Mr M any of the money that he's paid for the building works, to pay him any further compensation or to take any other action in response to his claim.

My final decision

My decision is that I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 11 August 2021.

Jarrold Hastings

Ombudsman