

## **The complaint**

Miss G complains that NewDay Limited won't refund to her the money that she paid for a sofa.

## **What happened**

Miss G used a credit card provided by NewDay in May 2018 to pay £207 towards the total cost of £3,707 for a new sofa. The sofa was delivered to her in July 2018 but it was faulty so the supplier agreed to replace it. The replacement was delivered in October 2018 but Miss G says that it was also faulty and that a wall was damaged during the delivery.

The supplier agreed to collect the sofa and to refund Miss G for the cost of it but Miss G said that she wouldn't accept the removal of the sofa unless she was also compensated for the damage. Miss G then made a claim to NewDay under section 75 of the Consumer Credit Act 1974 but it said that if she allowed the supplier to collect the sofa and make a full refund her claim would be closed due to there being no breach of contract. It said that it wouldn't be liable for any consequential losses but it did pay her £60 for its delay in dealing with her claim.

Miss G wasn't satisfied with its response so complained to this service. Our investigator initially didn't uphold her complaint because she said that the breach would be remedied by the supplier's offer to take the sofa and provide a refund. She said that it wouldn't be NewDay's responsibility to pay for any repairs or consequential losses and that Miss G should pursue the supplier for the cost of the damage repairs.

The sofa wasn't collected from Miss G and she didn't receive a refund and our investigator then said that NewDay should refund the full cost of the sofa, including any deposits, and arrange collection of the sofa from Miss G's address. She said that she'd not been provided with the cost to repair the damage so wouldn't be asking NewDay to compensate Miss G for that unless she provided some quotes or a receipt showing what the cost was.

NewDay has asked for this complaint to be considered by an ombudsman. It says that it initially rejected Miss G's claim as the supplier had agreed to assist her by replacing the sofa but she claimed that the replacement was also faulty. It says that Miss G hasn't provided any evidence of the faults with the replacement sofa and, as it wasn't a party to the second contract, it has no liability for reimbursing her. It also says that it's seen no evidence to show that the delivery team damaged Miss G's property.

## **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;

- to be able to uphold Miss G's complaint about NewDay, I must be satisfied that there's been a breach of contract or misrepresentation by the supplier of the sofa and that NewDay's response to her claim under section 75 wasn't fair or reasonable – but I'm not determining the outcome of Miss G's claim under section 75 as only a court would be able to do that;
- I consider it to be clear that the sofa that was delivered to Miss G in July 2018 was faulty and that the supplier agreed to replace it;
- the replacement sofa was also faulty and the supplier agreed to collect it and to refund to Miss G for the full cost of the sofa;
- Miss G says that damage to a wall was caused when the replacement sofa was delivered – she's provided a photo of that damage and said that she wanted the damage to be paid for before the sofa was collected;
- our investigator has said that Miss G hadn't provided a receipt or quotes for the cost of the repair to the damage and that, without it, she wouldn't be asking NewDay to compensate Miss G for that cost;
- I've not seen that Miss G has provided a receipt or quotes for the cost of that repair and I'm not persuaded that it would be fair or reasonable for me to require NewDay to take any action in relation to that damage;
- there have been issues between Miss G and the supplier about the collection of the sofa so it hasn't been collected from Miss G and she hasn't received the refund;
- I consider that there's been a breach of contract by the supplier as the sofa wasn't of satisfactory quality and the replacement sofa that was provided to her also wasn't of satisfactory quality;
- I consider that a collection of the sofa by the supplier and a full refund would have been an appropriate remedy for the breach of contract – but that hasn't happened;
- NewDay is jointly liable under section 75 for the supplier's breach of contract and as the sofa hasn't been collected from Miss G and she hasn't received a refund, I'm not persuaded that its response to her claim under section 75 has been fair or reasonable in these circumstances; and
- I find that it would be fair and reasonable for NewDay to take the actions set out below.

### **Putting things right**

I find that NewDay should refund to Miss G the £3,707 that she paid for the sofa, with interest. I also find that it should arrange and pay for the sofa to be collected from Miss G.

### **My final decision**

My decision is that I uphold Miss G's complaint and I order NewDay Limited to:

1. Refund to Miss G the £3,707 that she paid for the sofa.
2. Pay interest on that amount at an annual rate of 8% simple from the date of payment to the date of settlement.

3. Arrange and pay for the sofa to be collected from Miss G.

HM Revenue & Customs requires NewDay to deduct tax from the interest payment referred to at 2 above. NewDay must give Miss G a certificate showing how much tax it's deducted if she asks it for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 28 October 2021.

Jarrold Hastings

**Ombudsman**