

## **The complaint**

Mr S is unhappy NewDay Ltd won't refund money he paid for some work to be carried out at his property. He's made a claim under section 75 of the Consumer Credit Act 1974.

## **What happened**

Mr S engaged a company, who I'll call F, to carry out building work on a property he owns. In June 2019, Mr S used his Aqua branded credit card from NewDay to make a payment of €50 to F as a partial deposit for the work.

Mr S said that F abandoned the project before it was completed and there were many deficiencies with the work that had been carried out. In July 2020, he wrote to NewDay to make a claim under section 75 of the Consumer Credit Act 1974 (S75). He asked NewDay to reimburse around €38,500 to him with the possibility this amount could increase.

NewDay rejected the claim saying it wasn't able to establish there had been a breach of contract. Various correspondence was then exchanged, and NewDay investigated this issue as a complaint. In its response to Mr S, NewDay repeated its position that there wasn't enough evidence to support his claim that there'd been a breach of contract by F.

Mr S brought his complaint to our service where one of our investigators looked into it. Briefly, she thought S75 didn't apply to Mr S's situation as the cost of the building work exceeded the upper financial limit for such claims. Mr S didn't agree. He also questioned why we'd raised this as a defence for NewDay when it hadn't.

As the matter remains unresolved, it's been passed to me for a final 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've decided not to uphold it. I'll explain why. First, I'm very aware that I've summarised this complaint very briefly, in far less detail than has been provided, and largely in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here: has NewDay acted unfairly and unreasonably in not giving Mr S the refund he asked for?

If there's something I've not mentioned, I haven't ignored it. I've not commented on every individual point or argument, only those that I'm satisfied are central to me reaching what I think is the right outcome. Our rules allow me to do this. This reflects the informal nature of our service as a free alternative to the courts.

I would point out that this complaint is against NewDay, not F. I'm only looking here at whether NewDay has acted in a fair and reasonable way when dealing with Mr S's S75 claim for a refund.

S75 sets out that, in certain circumstances, as the provider of part of the finance used to pay for the building work, Mr S has a like claim against NewDay for any breach of contract or misrepresentation by the supplier, F. Here, Mr S says there's a breach of contract as F didn't complete the work and there were many problems with the work that was carried out.

As I've said above, S75 applies in certain circumstances. This includes a requirement that the cash price relating to any single item must be more than £100 but not more than £30,000. I've looked at the contract between Mr S and F. This clearly defines the scope and cost of the work to be completed. Using the same exchange rate as the one Mr S received when making the €50 deposit payment on his credit card, the cost of the work is around £48,000. This is considerably more than the £30,000 limit imposed by S75.

I know Mr S doesn't accept his claim falls outside of the S75 limits. I can see he says his contract was made up of individual phases, with the cost of each of these falling within the S75 limits. Mr S kindly provided details of on-line information from a high street bank. This used the example of two tickets costing £60 each not meeting the lower limit as, even though the total cost was over £100, the individual item price was below the limit.

I don't disagree with this – each ticket is effectively an individual contract for a single item that can be used separately. But I don't agree Mr S's contract with F is comparable with this example. When thinking about if Mr S was agreeing to have single items of work done, I've reviewed his contract with F and thought about its purpose. I can see how the work has been identified and how the cost of it has been defined.

From this, I'm satisfied the contract is for the work as a whole. It's one single contract for work to be carried out to Mr S's property. While it is split into separate phases, I can see these phases are intrinsically interlinked. For example, phase three – painting the interior and main façade, was unable to be carried out independently. It was reliant on phase two, the main bulk of the building work, being carried out first. After looking at the contract as a whole, I'm not satisfied it was a contract for distinct single items. Instead, I'm satisfied the purpose of the contract was for F to carry out the building work in its entirety, in a logically progressed way.

It follows that I'm satisfied it's the total price of the work set out in the individual contract here that needs to meet the financial limits of S75. As I've said, the total price was around £48,000. This is above the limit set out in S75 for Mr S to have a like claim against NewDay for the breach of contract he says has been committed by F. Taking all the above into account, I'm satisfied NewDay hasn't acted unfairly or unreasonably by not giving Mr S a refund under S75.

For completeness, I can see Mr S has questioned why we've raised the issue of his claim being outside the S75 limits when NewDay hasn't. As our investigator pointed out, the Financial Ombudsman Service is completely independent. We don't act or take instruction from either Mr S or NewDay. Our remit is an inquisitorial one.

I'm required to determine complaints by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. When considering what is fair and reasonable, I take into account, among other things, relevant law and regulations. Here that includes S75. If, as is the case here, I'm satisfied a claim doesn't fall within the limits set out in S75, it wouldn't be reasonable for me to direct NewDay to consider such a claim, even if it hadn't raised this point itself.

In summary, for the reasons given above, I'm satisfied the single cash price of Mr S's individual contract with F exceeds the limit set out in S75. So, I'm also satisfied this means NewDay hasn't acted unfairly or unreasonably when not giving him a refund.

**My final decision**

My final decision is that I don't uphold this complaint.

This final decision marks the end of the Financial Ombudsman Service's review of this complaint. This means we are unable to consider the merits of it any further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 June 2022.

John Miles  
**Ombudsman**