

## The complaint

Miss P complains that NewDay Ltd unfairly declined her claim under section 75 of the Consumer Credit Act 1974 (CCA).

## What happened

In 2019 Miss P used her NewDay credit card to pay £1,000 towards dental treatment for her daughter, which cost a total of £2,000.

Miss P says that the treatment had started in February 2020, but the supplier of the treatment subsequently stopped trading, leaving her daughter's treatment unfinished. Miss P subsequently raised a section 75 claim with NewDay to recover the sum she'd paid.

NewDay declined the claim. It said that section 75 didn't apply because a specific relationship that's required between Miss P, NewDay and the dental practice didn't exist.

Our investigator agreed that section 75 didn't apply, so they concluded that NewDay had acted fairly by declining the claim.

Miss P didn't agree, so her complaint was passed to me to make a decision on it. I issued a provisional decision on it. In summary, I said;

*In considering what I believe to be fair and reasonable in all the circumstances, I'm required take into account relevant law, rules, guidance, codes of practice as well as what I consider to have been good industry practice at the time.*

*When the evidence is incomplete, inconclusive or contradictory, I've made my decision on the balance of probabilities – that is, what I think is most likely to have happened given the available evidence and the wider circumstances.*

*Section 75 of the Consumer Credit Act 1974 is relevant here. It protects consumers who buy goods and services on credit. It says, in certain circumstances, the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier.*

*However, for section 75 to apply, there must be a debtor-creditor-supplier agreement under section 12(b) or (c) of the CCA.*

*Miss P is the debtor and NewDay is the creditor. However, it appears the dental practice, which is the supplier, entered into an agreement for treatment with Miss P's daughter.*

*I accept that Miss P has shown that she was required to sign a consent form for the treatment on behalf of her daughter, and Miss P says she was a minor at the time so she couldn't have entered into the agreement. However, as far as I'm aware, Miss P's daughter was 17 at the time of the agreement and I've not been persuaded as to a reason why she wouldn't have been able to consent to the treatment, outside of what appears to be the supplier's request to have Miss P sign a consent document. Additionally, that document*

*specifies that the parties to the agreement are the dental practice and the patient, Miss P's daughter.*

*As a result, I'm satisfied that the necessary debtor-creditor-supplier relationship doesn't exist and NewDay therefore isn't responsible or legally answerable for the supplier's breach of contract. So, I don't think it was unfair for NewDay to decline Miss P's section 75 claim.*

*I've also considered whether or not Miss P's claim might have had a prospect of success if NewDay had attempted a chargeback. Attempting a chargeback isn't a right, like section 75, but I'd have expected NewDay to attempt one if there had been a reasonable prospect of success.*

*Chargeback rules set out that they are subject to specific time limits. Generally speaking, it's necessary to raise a chargeback within 120 days of the date goods or services were expected to be performed, or from the date the consumer reasonably became aware they wouldn't be performed or received.*

*In this case, Miss P has told us that the dental practice had ceased trading in February 2020, and although Miss P was offered treatment with an alternative provider, she made enquiries and it was clear by June 2020 that no further treatment would be provided. As Miss P's claim to NewDay was made in November 2020, I'm satisfied that a chargeback would not have had a prospect of success.*

*I understand Miss P's frustration given the circumstances – she borrowed money to fund treatment for her daughter and doesn't seem to have received some or all of the treatment she paid for. However, my power is limited to determining whether or not NewDay reached a fair outcome on her claim, and for the reasons explained above, I'm satisfied that it did.*

Both parties responded to say that they had nothing further to add.

### **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.

Given that both Miss P and NewDay didn't have anything further to add to my provisional decision, I find no reason to depart from my provisional conclusions. As a result, I now make those conclusions final.

### **My final decision**

For the reasons explained above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 18 January 2022.

Stephen Trapp  
**Ombudsman**