

The complaint

Mr M complains about how NewDay Ltd went about helping him to recover money from a supplier. He also complains about it defaulting his account.

What happened

In June 2016 Mr M paid a supplier I will call "N" to carry out repairs on the electric windows of his car. Mr M was unhappy with the standard of the work and contacted N about this. There was some to and fro between Mr M and N, in which Mr M maintained that N's work was substandard, and N suggested that there was nothing wrong with the work. This contact was mainly conducted via WhatsApp and ended with both Mr M and N suggesting they'd take legal action against each other. At this point Mr M turned to NewDay Ltd for help.

Mr M had used his NewDay Ltd credit card to pay for the repairs. On that basis NewDay Ltd had two possible routes it could have used to refund Mr M's money, chargeback against N or a claim against NewDay Ltd under Section 75 of the Consumer Credit Act 1974 ("Section 75").

According to NewDay Ltd's records, it tried to carry out a chargeback and sent out the relevant form to Mr M. But by the time he returned the form it was too late to continue as the relevant deadline had been missed.

Moreover, again according to NewDay Ltd's records, in order to progress Mr M's claim under Section 75 NewDay Ltd needed further information. NewDay Ltd suggests it asked Mr M to provide this information, but he did not. But he did suggest if it needed "*hard*" evidence it could come and examine the car itself.

In the meantime, Mr M had not made any payments to his account. As a result the account fell into arrears. NewDay Ltd's records show it told Mr M about the arrears and let him know that it would default the account and possibly sell it should he not pay off the arrears. However, it heard nothing further from him, at that time. As a result, in February 2017 it sold the debt to a third party I will call "C".

NewDay Ltd suggests the next time it heard from Mr M was March 2021 when Mr M complained that it had not progressed his claim under Section 75 correctly. Specifically, Mr M suggested NewDay Ltd had not told him what further information it needed to move on his claim. Mr M also complained about what had happened to his account, in particular he wanted to know why the debt was defaulted. Mr M also wanted an explanation for why he was being told that there could be court action against him to secure the debt on his home.

In response, NewDay Ltd repeated that it had asked Mr M for specific information to support his claim under Section 75 and he had not provided it. On this basis it had not been able to continue looking into his claim. Moreover it suggested that in any event Mr M had paid a third party company who I will call "D" rather than N directly. According to NewDay Ltd this would have prevented it from upholding his claim under Section 75 in any event.

Further, according to NewDay Ltd's records, Mr M had not made payments to his account for more than 60 days. It had written to him to tell him what he needed to do if he wanted to keep the account open and avoid the default. It had told him he needed to clear the arrears and start making minimum payments, but he had not. Therefore, NewDay Ltd had sold his

account to C. NewDay Ltd indicated that it could not comment about any legal action C might have taken to recover the debt from him.

For all of these reasons NewDay Ltd did not agree it had done anything wrong and rejected Mr M's complaint.

Dissatisfied Mr M complained to our service.

Once Mr M's complaint was with us Mr M raised a new matter. He suggested that he had been treated differently and negatively by both N and NewDay Ltd due to the colour of his skin. Mr M also let us know that he had contacted a third party organisation who I will call "O" for advice. It appears that O's remit is to support consumers. He told us about the advice "O" had given him re his claim under Section 75. He wanted us to comment on this advice and explain why we were not holding NewDay Ltd to account in line with what O had told him.

One of our investigators looked into Mr M's complaint. She did not recommend upholding it.

NewDay Ltd appeared to accept this recommendation, Mr M did not. In summary, in rejecting the recommendation Mr M repeated that as far as he was aware he had provided NewDay Ltd with all the information it needed to look into his claim under Section 75. He also suggested he had contacted NewDay Ltd to check with it whether it needed anything further, but it had not responded to him.

Mr M also reiterated that he had gone to NewDay Ltd looking for help and in his opinion it had not helped him. He added that we must be "*siding with*" NewDay Ltd if we could not see this.

In addition, Mr M pointed out that from his perspective he had paid for something he had not got. He wanted to know if our investigator would pay for something she had not received. Mr M also wanted our investigator to ask all of her colleagues the question would they pay for something they'd not received.

Further, Mr M told us that when he had originally contacted NewDay Ltd in 2016 he had sent it a video to demonstrate the problem with the electric windows. We asked NewDay about the video footage it said it had no record of ever having received it.

Mr M told us that NewDay Ltd had messaged him privately on WhatsApp and told him he did not need to make the payments towards his credit card account because he was disputing the transaction with N. Moreover Mr M indicated he had never seen the letters from NewDay Ltd asking for payment as he'd been in hospital at the time. We asked him to provide information to demonstrate this. Mr M sent information showing he was in hospital, but this was before he engaged N to work on his car and before he stopped making payments to his card. Mr M responded that he had follow-up appointments, and this was what he'd been talking about, but he did not have letters to show this. Instead he suggested we could talk directly to his surgeon to confirm the dates of treatment. Moreover, he added that the same surgeon had told his family specifically not to show him any letters about debts while he was under the surgeon's care.

Mr M indicated that he wanted an ombudsman to take a fresh look at his complaint.

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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Chargeback

As Mr M paid for the goods and services using his credit card and wanted a refund, I've thought about whether NewDay Ltd dealt with his request fairly. The chargeback process is relevant in this case. This is a way in which payment settlement disputes are resolved between card issuers and merchants. They are dealt with under the relevant card scheme rules.

In certain circumstances the process provides a way for NewDay Ltd to ask for a payment Mr M made to be refunded. Those circumstances include but are not limited to where goods or services aren't supplied or as described/misrepresented by the company Mr M paid. A chargeback doesn't guarantee a refund there are a number of hurdles to overcome to reach that result. For instance Mr M had to demonstrate that a valid chargeback reason existed moreover N's bank could have put forward a defence to any chargeback claim.

Mr M suggests he did return the chargeback claim form in time. But NewDay Ltd's records do not support this. I have no reason to doubt the accuracy of its records on this point. There are set deadlines for the chargeback process which NewDay Ltd had to follow. Once these deadlines are missed there is nothing further NewDay Ltd is able to do using this process..

Additionally, Mr M talks about sending in video evidence. Even if he did send this what would this have shown? All it could have most likely shown was the windows not working properly. It would not show why and that is what would have been needed for the chargeback attempt. So whether Mr M did send the video evidence or not would not have made any difference to the chargeback, on balance.

Further, it is clear from the WhatsApp messages I have seen that N would have defended any chargeback and done so robustly. Based on what I've seen Mr M would not have been able to provide evidence to overturn that defence, I think what would have been needed here is an expert's report because N's stance was there was no problem with the work it did on the windows. So even if the chargeback could have gone ahead, which I don't think it could have done, due to the deadline being missed, it is unlikely it would have been decided in Mr M's favour for this reason.

For all of these individual reasons I have no proper basis for saying NewDay Ltd did not deal with the chargeback correctly.

Mr M's complaint about the handling of his claim under Section 75

Mr M is not just relying on chargeback. Rather, he also relies on the rights he considers that he has under Section 75.

Mr M is correct to suggest that because he used his credit card to pay N he may have the protection provided by Section 75.

The general effect of Section 75 is that if Mr M has a claim for misrepresentation or breach of contract against the supplier he can also bring a like claim against NewDay Ltd provided certain conditions are met.

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, in deciding what's a fair way to resolve Mr M's complaint, I have to take account of relevant law, amongst other things. Section 75 is relevant law. Therefore, I've taken it into account. But that doesn't mean I'm obliged to reach the same outcome as, for

example, a court might reach if Mr M pursued a claim for misrepresentation or breach of contract. Our service is an informal alternative to the courts and operates differently from them.

It follows though that if I found that there had been a breach of contract as Mr M suggests I would find it fair and reasonable that NewDay Ltd take responsibility for this.

I talked above about the qualifying conditions for a valid claim under Section 75. One of those conditions is that there must be a valid debtor-creditor-supplier relationship. This means that Mr M has to be the debtor, NewDay Ltd the creditor and N the supplier. NewDay Ltd says that this valid debtor-creditor-supplier relationship does not exist in this complaint because Mr M's payment went to D rather than to N. This in itself does not mean there was no valid debtor-creditor-supplier relationship. For example, if D and N had such a close relationship that they were "associates" as defined under the Consumer Credit Act 1974 then there may have been a valid debtor-creditor-supplier relationship. I don't have sufficient information about this point to make a finding. But I don't need it because I don't think NewDay Ltd ought to have acted differently in any event, for the following reasons.

In order to establish if there had been a breach of contract NewDay Ltd needed more information than Mr M supplied. It needed information to show what N had contracted with Mr M to do, and to show that the work done was not done with the requisite degree of skill and care. The WhatsApp messages between Mr M and N were not enough to show this and neither was the video information.

Mr M's position is that NewDay Ltd did not tell him what it needed. But NewDay Ltd's records show it asked Mr M for further information and told him why it was required, I have no reason to doubt the accuracy of NewDay Ltd's records on this point. Moreover, I can see from the information I have that Mr M questioned the need for any further information, from his perspective he had supplied enough, and he expressed dissatisfaction that NewDay Ltd were not cracking on with what it had. Which suggests to me Mr M was not open to the need for providing more information.

Further, NewDay Ltd was under no obligation to come and look at Mr M's car. It was his responsibility to provide the information to support his claim. In other words I don't agree that NewDay Ltd let Mr M down in declining to come out and examine his car in person.

This all leads me to find on balance that NewDay Ltd acted appropriately by asking for the information it reasonably needed to get on with things and Mr M did not supply this information. Rather than that Mr M was left not knowing what more he had to send to NewDay Ltd despite chasing it to find out.

Default of the account

Mr M would have agreed to the terms and conditions of the credit card account when he opened it. Since he entered freely into the agreement I think it is both fair and reasonable that NewDay Ltd can rely on those terms and conditions.

It does not seem to be in dispute that Mr M did not make his minimum payments and was in arrears for at least 60 days. Mr M suggests NewDay Ltd told him via WhatsApp that he did not need to pay. But he has not provided copies of these messages. Moreover the terms and conditions of the credit card agreement are clear NewDay Ltd required minimum monthly payments. I therefore find it unlikely it would have waived this condition in this instance.

Given that I find that Mr M had not got a payment waiver from NewDay Ltd I find that NewDay Ltd acted fairly when it wrote to him to tell him that if he did not pay he arrears it would likely default his account and chase him for payment or sell on the debt.

Mr M suggests he never received the letters. But I find it likely that these correctly addressed letters were delivered to his address. Therefore I find it fair and reasonable that NewDay Ltd be able to rely on them.

In any event, and this point contradicts what Mr M says about never receiving the letters, Mr M tells us his surgeon told his family not to show him letters about debt. That may be so, but I have no proper basis for saying because his surgeon did this NewDay Ltd cannot rely on the letters.

For all of these individual reasons I think NewDay Ltd acted appropriately in defaulting the account.

The actions of C

It appears that C is now taking legal action against Mr M in relation to the debt, but C is a separate legal entity from NewDay Ltd and I can't hold NewDay Ltd to account for the actions of C.

Neither can I look at what C may or may not have done as part of this complaint. That is because C is not a party to this complaint.

New matter

Mr M raised a new point about being discriminated against by NewDay Ltd by reason of his race. This is a new matter and therefore NewDay Ltd has not had an opportunity to investigate it or respond to it in its final response. Therefore I have no power to look at it in this complaint.

The advice from O

I don't know what advice O might have given Mr M and in what circumstances. I recognise Mr M thinks this service must follow the advice given by O. But this service is independent and must look at complaints using its own judgement and rules rather than following the advice given by third party organisations in response to queries from consumers.

Mr M's question

Mr M suggests that we should ask all of our colleagues if they'd pay for something that they'd not received. That is not the test I need to apply here, and I'll look at this point no further on that basis.

impartiality

I recognise that Mr M feels strongly about his complaint. I well understand therefore why he might think that this service must uphold his complaint, and if it does not this is unfair. I'd like to reassure him that I am not siding with NewDay Ltd just because I find it acted appropriately in the circumstances. I have set out my reasons for the findings I have reached which are based on all the evidence I have seen. Mr M might find it some comfort to know that I have looked at his complaint impartially.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 November 2022.

Joyce Gordon
Ombudsman