

The complaint

X complains that NewDay Ltd led her to believe her claim to reject a faulty item of furniture had been accepted.

What happened

I want to assure X, if I don't address every point that's been raised, it's not because I haven't thought about it. I have considered everything that's been said and sent to us. But I'm going to concentrate in this decision on what I think is relevant and material to reaching a fair and reasonable outcome. Both parties have provided detailed timelines of events, but for the purposes of this decision I will keep my summary of events brief.

In December 2021 X purchased a sofa and wardrobe online from a company I will call F. X considered the sofa was not of suitable quality and had concerns about the wardrobe – X says that it had marks and the drawers were difficult to open and close. It seems X was initially concerned about the sofa and only sought to return the wardrobe several months later. Initially X had mentioned the issues with the wardrobe sought advice on fixing them. X spoke to F and was unable to resolve the issues and so X contacted NewDay. F had offered to take the sofa back, but only to give a partial refund.

X asked that it consider a S 75 Consumer Credit Act 1974 claim. It made a chargeback and this was accepted by F for the sofa. This was collected and a refund made. X spoke to NewDay and was assured that the transaction had been dealt with and a refund would be made. X quite reasonably presumed this applied to both the sofa and the wardrobe, but this was not the case.

NewDay advised X to speak to F, but the relationship had broken down. NewDay then failed to return a call and in April X called again to find out what was happening. NewDay responded to the complaint and accepted it had failed to return a call and had given conflicting and inconsistent information. It offered X £100 compensation.

At this point NewDay raised a S 75 claim. It said it was unable to uphold the claim without an independent report. No report has been provided.

X brought a complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. X said that NewDay had implied the dispute had been settled and so X had not pursued it further. NewDay had not been as helpful as it should and this had caused distress.

Our investigator thought the compensation of £100 was fair. He explained the relevant rules for both chargebacks and S 75 claims. He said that as far as the wardrobe was concerned there was insufficient evidence to say that it was defective at the point of sale.

X didn't agree and said that he had made some errors of a factual nature. X reiterated the point that NewDay had suggested the matter had been resolved including the issue of the wardrobe. X felt the wardrobe was of unsatisfactory quality and wanted a refund.

I issued a provisional decision as follows:

"There are several matters I need to consider in this decision. However, I am addressing a complaint against NewDay and so I cannot deal with any issue which is specific to F such as the claim the wardrobe had been stolen. I have no jurisdiction over F.

I have to look at the handling of the whole issue by NewDay and the Section 75 claim. Considering the handling of the matter I think there were two things NewDay could have done better. One was return the call it had promised to make. It has acknowledged this and accepts it failed to make the call and the matter was only revived when X called it. I agree that compensation is due to this oversight.

The second and more fundamental point is the confusion as to what was meant when X was told the dispute had been resolved. I can appreciate that the call handler may have misunderstood what had been agreed and have given X the impression that all was settled. It is reasonable for X to have assumed that a full refund would be made. X was only made aware this was not the case after calling back having waited for the call that NewDay failed to make. I also think some compensation is due for the lack of clarity.

Section 75 Claim

On the matter of the S 75 claim I am not persuaded that NewDay was wrong to reject it without independent evidence. I have reviewed email exchanges between X and F and have noted that it was suggested by X that the marks or some of them could have been caused by the wardrobe being carried upstairs. I note it apparently got stuck and X has acknowledged that some or possibly all of the damage was caused then. In an email to F on 24 December X asked how this damage could be repaired. X later asked about the sticking drawers and was advised to ensure it was level and if needed to apply candle wax or similar. I have not seen any response to this and I cannot say if that was tried by X.

I am also aware that the wardrobe is made from timber reclaimed from old buildings with a rustic washed finish so some marks are to be expected. However, without an independent report I cannot say that at the time of delivery the wardrobe was not of satisfactory quality.

F has also disputed that the wardrobe wasn't of suitable quality, but it did accept the return of the sofa although it initially pushed back on this. That would indicate a willingness on its part to recognise when goods were not of suitable quality. Overall I cannot say that NewDay was wrong to reject the Section 75 claim.

Compensation

I have noted NewDay's offer of £100, but I think this does not take into account the full impact of the misleading information given to X. There was an expectation that the matter was settled and I can appreciate the disappointment when X discovered that the claim in respect of the wardrobe had not been settled. Therefore I think the total compensation should be increased to £200 to reflect the distress and inconvenience suffered."

Neither party accepted the provisional decision. NewDay said the declaration form it sent to X makes it clear that if the merchant challenges the disputed claim the sum will be re-debited to the account. It said it had tried to contact X regarding the merchant's challenge but had been unsuccessful. It felt the sum of £100 was sufficient.

X said her complaint wasn't that her claim had been rejected, but that she had been told it had been accepted and that she didn't need to return the wardrobe. She said she hadn't sought to return the wardrobe until some months later because she had been told not to

return it. She took exception to the suggestion that she had presumed the rejection applied to both the sofa and wardrobe since she had been told that it did and so no presumption was required.

She also said that the S 75 claim had not been rejected by NewDay as the matter had been referred to this service before it reached a conclusion. She noted the £100 offered by NewDay was in relation to a failure to return a call. She also said that she had not been told her S 75 claim had been rejected.

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.

I agree with X that the main issue was the misleading information given by NewDay regarding the claim about the furniture and I have amended the complaint details to reflect this. However, this is what I had addressed in my provisional decision. I note X takes issue with my use of the word 'presumed' in my decision. I have not suggested that this implies any fault on the part of X. In the original complaint X said it was reasonable for her to assume that her claim had been upheld. Both NewDay and I accept that the information given to her was wrong and so she was led to believe both items of furniture had been treated as unsatisfactory.

I have not been given a recording of the call, but I do not consider I need to listen to it as it is not in dispute that the information given to X was misleading. Incorrect information was given and this caused X distress and inconvenience. NewDay made a chargeback and this was rejected by the merchant and so it did as it had explained on the claims form and re-debited the sum due.

Because misleading information was given I can see that X had raised expectations and when it was made clear that the rejection of the wardrobe had not been accepted this caused her distress and inconvenience. That does not mean NewDay should be required to forgo the cost of the wardrobe. It made a mistake and X is entitled to compensation to recognise the distress and inconvenience she has suffered. I remain of the view that £200 is fair and reasonable.

On the matter of the S 75 claim I have reviewed the exchange of correspondence between X and NewDay in the summer of 2022 and I note NewDay has said it is willing to consider the claim further if X submits an independent report. At this point it has said that it is unable to uphold the claim in the absence of an independent report. In my provisional decision I agreed that it was reasonable for NewDay to conclude there was insufficient evidence to allow the claim to be upheld.

As such I will make no finding on the merits of the claim and leave it to X to decide if this is something she wishes to pursue. If both parties are unable to reach agreement on the S 75 claim it remains open to X to bring a complaint to this service on the S 75 claim, but not on the misleading information given regarding the chargeback.

Putting things right

NewDay should compensate X and consider the S 75 claim if X wishes to pursue it.

My final decision

My final decision is that I uphold this complaint and I direct NewDay Ltd to pay X £200

compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 1 May 2023.

Ivor Graham
Ombudsman