

## **The complaint**

Mr B complains about NewDay Ltd's handling of a claim he had made under section 75 of the Consumer Credit Act 1974 in respect of a mobile phone.

## **What happened**

In July 2022 Mr B used the credit card he held with NewDay to purchase a new mobile phone that included a camera from an online retailer. Mr B said the camera was an important feature for him and he needed it to be able to take clear pictures, particularly of documents, labels and receipts.

Mr B said he found the photos taken were disappointing because although clear in the centre the images would be blurry and rounded at the edges. He said the camera was faulty and the mobile phone wasn't of satisfactory quality.

Mr B decided to make a claim to NewDay under section 75 as he said the mobile phone wasn't fit for purpose. NewDay requested that Mr B provide an independent report as to the fault and its cause. It said it wasn't an expert and it would need advice as to the nature of any fault. NewDay said it was for Mr B to source and fund this report but if his claim was upheld this cost would be reimbursed.

Mr B said that he had supplied sufficient evidence of the fault by providing copies of the images taken by the camera. He said he didn't need to provide further evidence of the fault and that the onus lay with NewDay to show no fault existed.

NewDay said it was unable to proceed with Mr B section 75 claim without the independent evidence. Mr B complained to NewDay and later, having received no response, he complained to this service.

NewDay said that it should have responded sooner that it had to Mr B's complaint and offered him £50 compensation for the distress and inconvenience caused by its lack of response. It also said the section 75 claim hadn't been declined but it couldn't be progressed until the evidence as to the fault had been provided by an independent report.

Our investigator didn't recommend Mr B's complaint should be upheld. She said that NewDay's request for an independent report setting out the nature and cause of the report was reasonable as there could be a number of reasons as to why the camera produced the photos as it had.

Our investigator said that although under the Consumer Rights Act 2015, when a fault was raised in the first six months from the point of supply the onus would be on the retailer to show the goods weren't faulty there was a caveat to that being that there was already sufficient evidence to show that a fault existed. She said she didn't think this was the case here as the quality of the photos could be due to the way the camera had been designed by the manufacturer which wouldn't be a manufacturing fault. She said there wasn't enough evidence to say there had been a breach of contract by the retailer.

However, our investigator said she thought compensation for the delay in responding to Mr B's complaint was fair and recommended the amount offered by NewDay should be paid to him.

Mr B disagreed with the view of our investigator. He said the photos he had supplied clearly showed there was a fault with either the hardware or the software of the mobile phone's camera. He said that he had a reasonable expectation as to the quality of the images the camera would produce, and these were not met. He said the camera was not fit for purpose and the image quality not as described.

As the parties were unable to reach an agreement the complaint has been passed to me.

### **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.

Section 75 gives a consumer, in certain circumstances, equal right to claim a refund against the supplier of goods or services and the provider of credit if there has been a misrepresentation or breach of contract by the supplier. It isn't disputed here that Mr B's claim met the criteria as to the necessary relationships between the parties and that the claim was within the relevant financial limits. The issue for me to decide is whether NewDay has treated Mr B's claim fairly.

The Consumer Rights Act 2015 is also relevant to this complaint. This Act implies terms into a contract that goods supplied will be of a satisfactory quality. The Act also sets out what remedies are available to the consumer if these statutory rights are not met. This Act also says that if the goods are found to be faulty in the first six-months then it's assumed the fault was present from the point of supply unless there is evidence to suggest that isn't the case. After the first six months, then it is for the consumer to show the goods weren't of a satisfactory quality.

Under the Consumer Rights Act satisfactory quality is defined as meeting the standard a reasonable person would consider satisfactory, taking into account any description of the goods, the price and all the other relevant circumstances.

Mr B says that the copies of the photos the mobile phone's camera took clearly show there is a fault. He says it is unnecessary for him to arrange for the mobile phone to be inspected by an independent engineer and a report prepared. NewDay says that as it does not hold the necessary knowledge or expertise in mobile phones (or their cameras) to assess whether a fault exists that an independent report is necessary to establish whether there was a fault present and if so, what its cause was.

While I appreciate Mr B's view about the quality of the photos as there is some blurring and rounding of the images at the edges, I don't think I can reasonably say this is due to some inherent fault of the mobile phone. This is because I have no expert knowledge as to the technology, specification and operation of mobile phones and their cameras and the lenses that are fitted. So, I don't know whether there any expected characteristics of photos taken by this camera in some situations and/or whether there are acceptable limitations as to the quality of the pictures in those particular situations.

As set out by our investigator, there could be a number of reasons for the camera to have produced the photos that it has. In light of this, I don't think there is enough evidence to establish that there is a manufacturing fault with the phone, be that with the hardware or software. I therefore haven't seen enough evidence to say a reasonable person would

consider the phone of unsatisfactory quality in all the relevant circumstances

As I don't think there is sufficient evidence to establish the presence of an inherent fault, I think it was reasonable for NewDay to have requested Mr B to have the mobile phone inspected and a report provided. I've seen that although Mr B would have to cover the cost of this report, but this would be reimbursed if his claim was successful.

I've also seen that at this point, Mr B's section 75 claim hasn't been declined. If a report is forthcoming, then NewDay will review it. I think this is fair and I don't think I can reasonably say NewDay has acted unreasonably in the way it has handled Mr B's section 75 claim.

However, NewDay has accepted that there was unnecessary delay in its dealing with Mr B's complaint about its handling of the section 75 claim. It has offered Mr B £50 compensation for that. I think this is a fair amount when taking into account the impact the delay would have had on Mr B. I accepted it caused him distress and inconvenience. If that compensation hasn't yet been paid then I would ask NewDay to do so.

### **Putting things right**

Although I'm not upholding Mr B's complaint as to NewDay's handling of his section 75 claim I agree that NewDay could have been more proactive in respect of his complaint that requiring a report was unnecessary. I am asking NewDay to pay Mr B £50 compensation for that delay.

### **My final decision**

For the reasons set out above, and although I appreciate this will be of disappointment to Mr B, I'm not upholding his complaint that NewDay Ltd unfairly handled his section 75 claim. However, I am asking NewDay Ltd to pay Mr B, if it hasn't already, £50 as compensation for the delay in responding to his complaint which caused him unnecessary distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 18 October 2023.

Jocelyn Griffith  
**Ombudsman**