

## **The complaint**

Ms P complains that NewDay Ltd, trading as Aqua, who I'll call "NewDay", were unreasonable to reject a claim she made to them under section 75 of the Consumer Credit Act 1974 ("section 75").

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my 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.

I know it will disappoint Ms P, but I don't think NewDay have been unreasonable here. Please let me explain why.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and some, or all, of the payment was made with a credit card, it might be possible to make a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

I'm not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what's a fair way to resolve the complaint, but I don't have to reach the same view as, for example, a court might reach when considering breach of contract or misrepresentation.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

Here, Ms P says that there was a misrepresentation as she wasn't told about the VISA requirements pertaining to the countries she was to pass through on the flights she bought.

If Ms P was given a false statement of fact or law, and if that false statement was a significant reason why she entered into the agreement, I may think the agreement had been misrepresented to her. In those circumstances I may think NewDay were unreasonable not to consider and uphold a claim under section 75.

I'm not persuaded that there was a false statement of fact made by the airline. The business' system notes show they considered the matter and that the airline website *"has a box in yellow when booking tickets. That section provides links to all the necessary documents that are needed for the destination country. When booking the same trip, it shows a blue information icon next to the section that says 1 connection. In that information box it provides the following warning; Your London - Abuja trip includes a stop in Paris which may require an overnight stay at your own expense. Please check the entry requirements for this country."*

On that basis it seems the information NewDay had acquired demonstrated that Ms P had been able to access the requisite information about VISA requirements and that there was no "false" statement made about them.

I don't, therefore, think NewDay were unreasonable to reject Ms P's section 75 claim, and, for the same reasons, I don't think a chargeback would have been likely to succeed.

### **My final decision**

For the reasons I've given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 29 November 2023.

Phillip McMahon  
**Ombudsman**