

The complaint

Mr V complains NewDay Limited has not met its obligations in regard to a transaction he made to have his house painted and associated works.

What happened

In August 2022 Mr V talked with a company which said it provided house painting services (which I will call "Firm C"). Mr V says Firm C told him it would power clean the external walls of his house, make good on any minor repairs as required, paint his house with two coats of a specified paint and clean up and make good. Mr V signed the contract and agreed the works and the total price of £6910. He paid £2300 of the total on his NewDay credit card. Mr V says that the work was never completed and what work that was done was done badly. He says he took Firm C to court and won but added that (when he brought his complaint to this service) that Firm C hadn't paid him what he claimed in court. So that's why he took his dispute to NewDay.

NewDay considered his dispute with Firm C and raised a chargeback, and Firm C responded by saying Mr V was in breach of contract and he didn't want to honour the agreement and refused to let it complete the works, which it says it was happy to do. So NewDay didn't take the Chargeback further and didn't think it needed to do any more overall. So Mr V brought his complaint to this service.

Our Investigator considered the matter and felt that NewDay hadn't treated Mr V fairly and should be held liable because Firm C hadn't provided the services agreed in the contract. And as NewDay has connected lender liability under Section 75 of the Consumer Credit Act 1974 it can be held to a 'like claim' such as that that Mr V could make against Firm C. But NewDay didn't agree so this decision came to me to decide.

In March 2024 I issued a provisional decision that explained why I didn't think Mr V had lost out because of what Mr V did. And I pointed to evidence that Mr V had prevented Firm C completing the works. Both NewDay and Mr V have confirmed that they've received that provisional decision and both have commented on it.

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.

NewDay responded to my provisional decision by saying it agreed with it and didn't have anything else to add. Mr V accepted my position and also didn't have anything further to add. As neither party provided any further comment or evidence in response to my provisional decision I don't see any persuasive reason to deviate from the position therein. Accordingly I repeat my rationale (below) and it is my decision that Mr V's complaint is unsuccessful. NewDay has nothing further to do in this matter.

Rationale of provisional decision

I should make it very clear that this decision is not about Firm C. This is because it isn't within the jurisdiction of this service for these types of complaints. This decision is solely about what NewDay did or didn't do in relation to its obligations in relation to Mr V. And it should be remembered that NewDay is only involved in this issue as a result of its managing Mr V's credit card account which he used to make this transaction to Firm C, it wasn't the party contracted to paint his house. However it does have obligations here and in essence the tests I must consider in relation to NewDay are whether the transaction itself was made correctly, and whether NewDay's position in regard to Chargeback and Mr V's Section 75 claim to it under the Consumer Credit Act 1974 was fair.

I've considered what Mr V has said to this service and asked a number of further questions and particularly asked for Mr V to provide further evidence. It is also clear now that Mr V has had remedial work done by other parties to the house (including by himself). He has provided photographs which he says shows the poor work by Firm C which I've studied carefully and some documentation from the court process he initiated against Firm C. However Mr V still hasn't provided clarity on what happened in the court process and hasn't responded to my requests for further information despite being chased for such information. Mr V doesn't contest that he made the transaction originally, or that it was applied incorrectly to his account. Mr V accepts he authorised and consented to the transaction being made at the time it was made. I've considered the transaction itself and I'm satisfied NewDay didn't do anything wrong in processing it or allocating it to his account.

could NewDay challenge the transaction through a chargeback?

In certain circumstances, when a cardholder has a dispute about a transaction, as Mr V does here, NewDay can attempt to go through the chargeback process. Chargeback isn't a right, but this Service does consider it good practice to raise a chargeback, if within the time limits and there is a reasonable prospect of success. I don't think NewDay could've challenged the payments on the basis Mr V didn't properly authorise the transaction, given what I've already set out. NewDay raised a chargeback on the transaction on Mr V's behalf. Firm C responded to the chargeback noting the following:

"We carried out the first stage of the job, he was happy, he paid. We also did free additional work (some rendering) which took 2 days. Unfortunately, on the second stage of the job it rained, and it did ruin the painting."

"We have been back to his house to re-do the job, but he would not let us due to the fact Mr V has sourced a cheap source of paint that he can get elsewhere and now does not want us to go and complete his job."

"We are entitled to go and finish the job, but he does not want us to. Rain was not expected and although it was unfortunate, we are obviously prepared to go and sort it out for him. And he is now in breach of contract with us."

In light of this NewDay explained to Mr V it couldn't take his chargeback any further. Chargeback is a process managed by the card network which is a straightforward process to enable cardholders and merchants to have a process to settle disputes between them. It is not designed to test evidence in an adversarial manner such as in the courts. But rather it is a straightforward process for each side to provide evidence and in the event of neither side accepting the other's point of view, it allows for the network itself to decide the outcome of the dispute. So NewDay's responsibility here under chargeback is to consider at each stage whether there is a reasonable prospect of success. Here it received very clear evidence from Firm C explaining in its view the problems here were solely as a result of Mr V's unwillingness to allow Firm C to complete its side of the contract.

I note in Mr V's email dated 21 January 2024 to this service he says about Firm C "*Since then we looked at their company reviews and decided they were not trustworthy to carry out the work. Once the weather warmed up I attempted to get a first coat on the walls myself to try and stop the mould spores that were forming in the house.*" So it seems clear that Firm C's argument that it wasn't allowed to complete the works is supported by Mr V's own testimony as he says that Firm C wasn't trustworthy 'to carry out the work' and that he then worked on the walls himself, which suggests Firm C's comments about not being allowed to continue are reliable. Considering the scheme rules and what it knew I don't think NewDay has treated Mr V unfairly in regard to chargeback by not taking the matter further. This is because chargeback's can only be considered on the basis of the representations made by both sides, and it is clear that both sides here had and have very different explanations of what happened. So having considered the relative positions of the parties and the scheme rules and what we know now, I'm not persuaded Mr V has lost out due to NewDay not taking the matter further under chargeback.

how about the Consumer Credit Act 1974?

Before considering whether a 'like claim' can be made here the Consumer Credit Act 1974 (CCA for short) sets out pre-requisite rules including with regard to financial limits and the required relationship between Debtor Creditor and Supplier. Having considered the facts here I'm satisfied these are in place for a like claim to be considered against NewDay. For such a like claim to be successful it needs to be established that there was either misrepresentation or breach of contract by Firm C with regard to the contract it agreed with Mr V.

Misrepresentation

Here Mr V doesn't argue that he only entered the contract due to representations made by Firm C that were untrue. In fact it seems the first stage of the work was completed, and Mr V made the second payment as agreed. Mr V makes clear that Firm C didn't do what it should have done rather than misrepresented the matter to him. And Firm C's comments on the matter also point to the agreed works not getting done albeit for different reasons. So I'm not persuaded that Mr V has lost out here due to a misrepresentation.

Breach of contract

Here NewDay have pointed to the fact that Mr V didn't pay the full amount agreed and that he did get some of the agreed contracted delivered by Firm C. The contract agreed amount was £6910 however Mr V says he only paid £4600, albeit some of the payment wasn't due till completion of the job and completion of the job was not actually achieved. Mr V points to taking Firm C to court. I've seen documentation from Mr V showing the claim being made and evidence of the court ordering bailiffs to seize materials from Firm C so that Mr V could recoup his losses. However it seems from what Mr V says Firm C never attended the court process and I've seen no persuasive evidence of bailiffs seizing goods from Firm C or whether Mr V did get some of his money back. And Mr V hasn't responded to our requests for evidence on the matter, so it's possible that he's either given up on the claim entirely, or has got all his money back or somewhere in between.

I've considered Companies House and its clear Firm C hasn't gone into liquidation or been dissolved. So it seems to be still functioning to a greater or lesser degree. But it is also clear from what Firm C said in its response to the chargeback that it considers that it is Mr V who's at fault here for what happened and that it was happy to complete the works but was prevented from doing so by Mr V.

Mr V has supplied photos of rain damaged paintworks on his house, but that the rain impacted the work is an agreed fact between the parties and there's no dispute that it rained during the painting of the house. And that the painting wasn't completed or completed with reasonable skill and care. But that fact in itself doesn't demonstrate unequivocally that there was a breach of contract and that NewDay should cover Mr V's losses in itself. Both parties also agree that the works agreed weren't completed with each party blaming the other. However as I've mentioned Firm C's comments to NewDay have been latterly supported by what Mr V has said on the matter as I've already mentioned, specifically *"Since then we looked at their company reviews and decided they were not trustworthy to carry out the work."* So it seems likely that Mr V did stop Firm C from completing the work when it says it wanted to.

NewDay could have done more here to establish what happened. However it is also clear that Mr V hasn't provided information or evidence required of him recently. And he accepts he's had the work remedied by other parties, so no independent assessment of the issues can be reached now, for example through an independent inspection.

Mr V hasn't provided the judgement the court made despite being repeatedly asked for it. So it is not clear whether the judgement was in default (due to Firm C not attending or contesting the matter) or that the judge made a judgement on the substance or merits of the claim. It is also unknown whether the judge made any findings of fact as to what happened between Mr V and Firm C within the course of this dispute. But considering he's implied that he didn't let Firm C finish the work I don't see why NewDay should suffer any loss as a consequence of Mr V's decision here.

It is clear bailiffs were ordered to make recovery from Firm C as result of the court process here but again it is unknown whether they were successful or not and whether Mr V's losses have been reduced or indeed negated as a result of this bailiff action. And again Mr V has not answered this when requested to do so.

summary

Having considered all of Mr V's arguments and evidence provided to date I'm not persuaded he's lost out because of how NewDay treated him. I think on balance that Firm C weren't allowed to complete the work or make good on the rain affected painting as that's what Mr V suggests happened and Firm C argue that point. And accordingly I don't think this complaint about NewDay should be upheld as I'm not persuaded there was a breach of contract or material misrepresentation it can be fairly held responsible for. And I don't think Mr V lost out due to NewDay's approach to chargeback either.

My final decision

I do not uphold this complaint against NewDay Limited. NewDay has nothing further to do in this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 6 May 2024.

Rod Glyn-Thomas
Ombudsman