

## **complaint**

Miss A says that a bench she purchased using her NewDay Ltd credit card wasn't the right size.

## **background**

Miss A says that the supplier won't give her a refund. She brought a complaint to NewDay but it didn't refund her either.

Our adjudicator didn't think that NewDay should pay Miss A the refund. She thought that it made a reasonable attempt to raise a dispute with the supplier. She also explained that Miss A didn't have a Section 75 claim against NewDay because her card payment didn't go directly to the supplier.

Miss A disagrees. In summary, she says the supplier should have given her a refund and it went back on its promise to pay her back.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

*NewDay tried to get Miss A's money back – which is fair*

NewDay issued what is known as a 'chargeback' against the supplier. This is different to Section 75. It is not a consumer right, and is not guaranteed to succeed.

The chargeback was defended by the supplier - it said that Miss A had agreed to its terms and conditions which outline that bespoke items are non-refundable and may vary in size by a few millimetres.

While Miss A may not agree with the reason the chargeback was defended (and she says the supplier changed its mind about the refund) – I don't think that NewDay is at fault for the chargeback failing. I think it acted fairly here.

*Section 75 doesn't apply here*

Subject to certain rules Section 75 makes the provider of credit equally responsible where there is a case of breach of contract by the supplier of goods or services paid for using its finance. However, for Section 75 to apply the finance payment must be made directly to the supplier of those goods or services.

In this case, Miss A's credit card payment was made to a third party payment service, which then sent funds on to the supplier. Because the supplier didn't receive the credit card payment directly I don't think that Section 75 applies in this case.

Where a third party has taken a credit card payment Section 75 will only apply where that third party is an "associate" of the supplier as defined by s184 of the Consumer Credit Act 1974. The Act defines an association very narrowly and I am not convinced that one exists here.

I understand that Miss A thinks the supplier has acted poorly. But because Section 75 doesn't apply I don't think it would be fair to say that NewDay is also responsible.

I am sorry to hear about Miss A's disappointment with her purchase. However, I don't think that NewDay has done anything wrong here.

**my final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 30 November 2015.

Mark Lancod  
**ombudsman**