

complaint

Mrs M made £5,000 payment on her NewDay Ltd credit card to buy building materials for her builder to use. She says the building work wasn't completed on time so there was a breach of contract.

She's unhappy that NewDay won't refund her for the building work under Section 75 of the Consumer Credit Act 1974 ("CCA").

background

In 2014 Mrs M used her credit card to make a £5,000 payment for building material. The payment was made to her builder's trade account with a building materials supplier.

Mrs M tried to settle the matter directly with her builder, but she wasn't able to do this. In August 2016 she asked NewDay to re-open a claim she had made under Section 75 of the CCA.

Mrs M wants NewDay to reimburse her for the building work under Section 75 of the CCA. She says the work wasn't completed on time so there was a breach of contract.

The building work contract was worth £87,000. NewDay has refused to refund it under Section 75. It says it was only involved in the contract with the building material supplier, and it wasn't involved in the contract to carry out building work. So there isn't a valid 'debtor-creditor-supplier' ("d-c-s") relationship for Mrs M to make a Section 75 claim.

Our investigator didn't think Mrs M's complaint should be upheld. She said that for a Section 75 claim to be successful there must be a d-c-s relationship involving *only* three parties – a debtor, a creditor and a supplier. In this case she thought there were four parties involved:

- a debtor (Mrs M)
- a creditor (NewDay) – the credit card provider
- a supplier – the builder
- the building materials supplier.

Our investigator said that as Mrs M made the £5,000 payment to the fourth party (the building materials supplier) there was an extra party in the chain. So there wasn't a valid d-c-s relationship in place. She also said that a Section 75 claim can only be made in respect of contracts worth up to £30,000. And the contract Mrs M wants NewDay to reimburse her for was worth £87,000.

Mrs M disagreed with this. So I've been asked to review this complaint.

my provisional findings

In my provisional decision I said that I didn't think Mrs M's complaint should be upheld either. But my reasoning was different to our investigator's.

I said that Section 75 provides that, under a very specific set of circumstances, a consumer may seek to recover money paid under a contract with a supplier from her credit card provider. But Section 75 only applies to goods and services worth more than £100 and no more than £30,000. In this case the contract Mrs M is claiming for (the building work contract) was worth £87,000. So Section 75 wouldn't apply.

I also said that the relevant building work contract is signed and dated 13 August 2013. It is between Mrs M's husband (Mr M) and the builder. Mrs M wasn't party to it. I thought that contract Mrs M had with the buildings supplier (to credit £5,000 to the builder's trade account with it) was distinct from and not connected to the 2013 contract. In other words I thought that they were two separate and unconnected contracts. I acknowledged that Mrs M might've made the payment to get materials for the ongoing building work. But I said that neither NewDay, nor the buildings supplier, were parties to the 2013 contract. So I don't think Mrs M could make a successful Section 75 claim for the cost of the building work for this reason either.

In the circumstances, I didn't think NewDay has made a mistake when it declined Mrs M's Section 75 claim.

NewDay didn't have anything further to say.

Mrs M responded and made several comments that I've considered below.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And I remain of the view that it wouldn't be fair and reasonable for me to uphold Mrs M's complaint. I'll explain why.

Mrs M seems to accept that as the building work contract was worth £87,000, it wouldn't be covered by Section 75. She says that if there aren't any other consumer rights that apply, she would accept any amount that may be covered under Section 75.

I understand where Mrs M is coming from. But I'm afraid that Section 75 doesn't work that way. It only applies to goods and services worth more than £100 and no more than £30,000. And the relevant contract in this case is worth £87,000. So Section 75 doesn't apply in this case. It isn't possible for her to try and get a smaller amount (up to £30,000) from NewDay under Section 75.

I've also considered whether Section 75A of the Consumer Credit Act 1974 might apply. But that only covers certain agreements where the cash price of the goods is more than £30,000, but less than £60,260. As the contract in this case is worth £87,000, that doesn't apply either.

Mrs M has made further points to say why she thinks the building contract was connected to the contract with the buildings supplier. Amongst other things she points out that the building work was for house she owns jointly with Mr M. I've considered those points in full. However, the bottom line is that the building work contract isn't covered by Section 75. So I don't think it wouldn't be right for me to require NewDay to settle Mrs M's claim under Section 75.

I don't underestimate Mrs M's strength of feeling about what has happened. And I appreciate that she's unlikely to accept this decision. But for the reasons set out above, I don't uphold this complaint.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 30 October 2017.

Laura Forster
ombudsman