

## **complaint**

Mrs H complains that NewDay Ltd will not refund sums debited to her credit card account, and interest and charges, after she was victim of a scam. She brings this complaint under section 75 of the Consumer Credit Act 1974. She is represented in bringing this complaint by an officer of her local trading standards department, Ms D.

## **background**

Mrs H saw an advert online for goods supplied by Company A. She believed that she was being offered an initial free trial for which she only had to pay postage and packing of approximately £4.95. She applied for the goods and gave her credit card details. Mrs H received two packages of goods – one from Company A, and the other from a different business, Company B, whom she had not heard of. She then found that a total of £193.78 had been charged to her account by Company A and Company B.

Mrs H contacted NewDay to complain about what she thought was a scam. NewDay advised her to contact the companies to cancel the transactions and ask for a refund. With the help of her local Trading Standards Department, Mrs H did manage to get a full refund from Company B for the goods it supplied, but not the £4.95 postage and packing it had charged. She also got a partial refund from Company A for the goods it had supplied.

She thought NewDay should cancel the remaining balance of the transactions, and the interest and late payment charges it had applied, under section 75. NewDay declined to do so. It said she must have ticked a box online applying for the goods and agreeing to the suppliers' terms and conditions. So Mrs H complained to this service.

Our adjudicator considered that Mrs H might well have been the victim of a scam. However he said that a claim against NewDay under section 75 could not succeed as that section did not apply to any single item with a cash price not exceeding £100. In this case, no single item supplied was over £100 in value. However, he considered it would be reasonable for NewDay to refund two late payment charges totalling £24 applied to Mrs H's account.

NewDay did not agree. It said that:

- it had done nothing wrong;
- it was not aware/did not agree that Mrs H was the victim of a scam;
- the late payment charges were applied in accordance with the account terms and conditions; and
- section 75 did not apply in this case as no item supplied had a cash price of more than £100.

Ms D responded on behalf of Mrs H to say that Mrs H only dealt with Company A. She was not aware of Company B until its goods arrived. Also, the total value of all the goods supplied was more than £100, so section 75 should apply.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

The wording of section 75 is quite clear. It says that it does not apply *so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100*. So I agree that the section cannot apply in this case. The fact that the total cost of the items supplied was more than £100 does not change matters.

However, I don't think NewDay did all it could to help Mrs H when she approached it. When goods are paid for using a credit or debit card, the paying company, NewDay in this case, has the right to chargeback the transaction to the supplier's bank in certain circumstances. We consider a card company should do this if the circumstances are appropriate, and there is a reasonable prospect of the chargeback succeeding.

In this case, I don't think a chargeback of the transaction with Company A was likely to be successful, because Mrs H did apply for, and received, the goods, although she did not understand the terms and conditions attached to them.

However, she did not apply for any goods from Company B. This seems to have been accepted by Company B because it gave her a full refund for the goods. So I think that a chargeback in respect of the payment to Company B was likely to have succeeded.

Nothing I have seen in NewDay's files suggests it considered making a chargeback, or discussed this with Mrs H. She is still out of pocket for the £4.95 charged for postage and packing, so I think NewDay should refund this to Mrs H, with any interest charged on it.

Because NewDay was not as helpful as it should have been, I think it is reasonable that it also refunds the two late payment charges, totalling £24, applied in September and December 2014, together with any interest charged on these.

### **my final decision**

For the reasons I have set out above, my decision is that I uphold this complaint in part. I order NewDay Ltd to:

1. refund to Mrs H the £4.95 charged by Company B for postage and packing, and the late payment charges applied to her account in September and December 2014; and
2. recalculate the interest charged on Mrs H's account as if these items had never been applied to her account.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs H to accept or reject my decision before 10 August 2015.

Lennox Towers  
**ombudsman**