

## **complaint**

Mr C complains that NewDay Limited won't refund to him the money that he paid for a laptop computer. His complaint is made against NewDay under section 75 of the Consumer Credit Act 1974.

## **background**

Mr C used his NewDay credit card in October 2016 to pay £574.97 for a laptop computer. He had some issues with the laptop and he made a claim to NewDay under section 75 in December 2017 – after the twelve month warranty had expired. It asked him to provide an independent report on the faults with the laptop. He wasn't satisfied with its response so complained to this service.

The adjudicator didn't recommend that this complaint should be upheld. He said that there was insufficient evidence that the laptop was of unsatisfactory quality or unfit for purpose at the point of sale – and he said that he couldn't rely on Mr C's assurances that there was a fault with the laptop without the assistance of an independent report. And he didn't agree that NewDay had acted inappropriately in declining Mr C's claim.

Mr C has asked for his complaint to be considered by an ombudsman. He has responded in detail and says, in summary, that:

- he's repeatedly explained the limitations of an independent report;
- he's provided a simple summary of the proof which he's backed up with video evidence;
- the laptop is a branded, relatively high-spec laptop which would be expected to provide several days of use, several hours a day as a laptop for work use, student use and as a sole machine in a home environment;
- the fault occurred the first time after six months, but disappeared the next morning so he wasn't able to record the fault;
- it then recurred more seriously after a year when he recorded the videos;
- the laptop has had low usage and was only bought for holidays and other occasions when his other machines were tied up; and
- the evidence that he's provided hasn't been appraised.

## **my findings**

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

In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier. To be able to uphold Mr C's complaint about NewDay, I must be satisfied that there's been a breach of contract or misrepresentation by the retailer and that NewDay's response to his claim under section 75 wasn't fair or reasonable. I'm not determining the outcome of Mr C's claim under section 75 as only a court would be able to do that.

Mr C bought a laptop computer in October 2016. He says that there was a fault with the laptop about six months later but the fault disappeared the next day. He says that the fault reoccurred more seriously about six months later and that he recorded a video of the fault. But the laptop's twelve month warranty had expired at that time, he didn't return the laptop to

the retailer and he didn't make a claim to NewDay until December 2017 – about 14 months after he bought the computer.

NewDay asked him to provide an independent report about the fault but Mr C has refused to do so. I consider that it was fair and reasonable for it to ask Mr C to provide an independent report about the fault – and I don't consider that it had to rely on the evidence that he'd provided. And in the absence of an independent report, I consider that it was fair and reasonable for it to conclude that Mr C hadn't provided enough evidence to show that there'd been a breach of contract or misrepresentation by the retailer.

I'm not persuaded that NewDay's response to Mr C's claim was unfair or unreasonable. And I find that it wouldn't be fair or reasonable in these circumstances for me to require NewDay to refund to Mr C any of the money that he paid for the laptop or to require it to arrange for the laptop to be repaired – or to take any other action in response to his complaint.

### **my final decision**

For these reasons, my decision is that I don't uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 13 March 2019.

Jarrold Hastings  
**ombudsman**