

## complaint

Ms I is unhappy that NewDay Ltd won't reimburse her for a claim she's made under section 75 of the Consumer Credit Act.

## background

In July 2013 Ms I made a payment of £1,500 to a third party so her parents' timeshare points could be resold and transferred out of their names. Ms I says this payment was a gift to remove the pressure her parents were under paying hefty membership fees and as they could no longer travel due to their ages.

Unfortunately the third party went into liquidation. The transaction wasn't completed and the transfer of liability didn't take place. So, her parents remain responsible for payment of the timeshare member ship fees.

Ms I asked her credit card supplier NewDay to reimburse her under section 75 of the Consumer Credit Act.

NewDay said in its final response that the original contract was between Ms I's parents and the third party. So, it couldn't make a refund under section 75 to Ms I.

Our adjudicator felt this complaint shouldn't be upheld. She said:

- In certain circumstances and under a very specific set of circumstances section 75 gives a consumer an equal right to claim against the supplier of goods or the provider of credit.
- One of those conditions is that there must be a direct relationship between the debtor (Ms I), the creditor (NewDay) and the supplier (the third party).
- In this case there isn't such a relationship as Ms I didn't enter into the contract with the third party supplier. Her parents did. This breaks the direct link needed and Ms I doesn't have a valid claim under section 75.
- The intention of the transaction Ms I was involved in was to release her parents from their contract with the third party supplier. Although she says this was a gift it was something she'd agreed with her parents and can be seen as the act of financing the transaction rather than a gift to her parents who were involved in the process.
- Ms I also says she was in regular contact with the third party supplier and so in effect she was in a contract with it. But it was her parents who were exercising their ability to resell their timeshare points. Ms I was facilitating the payment for that to happen. So, the necessary "debtor- creditor-supplier" relationship didn't exist for there to be a valid claim by Ms I against NewDay.
- Its unfortunate Ms I's lost money when the third party went into liquidation. But NewDay's decision is fair and she can't reasonably ask it to do more.

Ms I doesn't agree and has asked for an ombudsman review. In summary she doesn't accept she should be considered the "*facility for payment*". She made the payment as a gift. She hasn't had the money back from her parents. They didn't know what was going on or

that she was making the payment. She'd corresponded with the third party for some time. She says there is an unbroken connection between her and the other two parties. Precedent suggests she has a valid claim. She's an innocent party. Her complaint should be at least partially upheld.

### **my findings**

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

Ms I has provided detailed submissions to support this complaint. I've read and considered them all. But my findings are expressed in considerably less detail. And they focus on what I think are the main issues.

I do understand Ms I's frustration and strength of feeling. But the problem here is that, for her to have a successful claim against NewDay the payment transaction has to meet the specific requirements of the Consumer Credit Act.

Here it does not. The contract for the services was between the third party and Ms I's parents. Even though Ms I dealt with the third party on her parents' behalf and arranged and made the payment to allow the sale of their timeshare points and their release from their contractual liabilities, I've seen nothing to suggest she was ever a party to the contract with the third party supplier.

I think this conclusion is supported by the fact that her parents still had to be involved and sign documentation when Ms I proposed making the payment. And I think this remains the case whether or not her payment is viewed as a gift.

On balance I don't think Ms I has a valid claim against NewDay under section 75 of the Act.

I understand that Ms I was acting with the best of intentions when dealing with the third party. And I sympathise with the unfortunate and unfair position she's found herself in.

Even so, taking everything into account, I don't think I can fairly or reasonably require NewDay to make a refund of any money to her as she'd like.

Overall I think the adjudicator's proposed resolution of this complaint is fair and reasonable. And I don't see any reason to change the proposed outcome in this case.

### **my final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms I to accept or reject my decision before 27 April 2017.

Stephen Cooper  
**ombudsman**