

complaint

Mr G complains that NewDay Limited, trading as Marbles, won't refund to him the money that he paid to a firm of solicitors. His complaint is made against Marbles under section 75 of the Consumer Credit Act 1974.

background

Mr G instructed a firm of solicitors in 2013 to advise him in connection with some litigation about a construction dispute. He used his Marbles credit card to pay £10,000 to the solicitors in October 2016. He complained to the solicitors about the service that he'd received in November 2016 and January 2017. It didn't uphold Mr G's complaint and said that the costs had been properly incurred and that an agreement about the outstanding costs had been agreed. Mr G complained to Marbles under section 75 and asked it to refund to him all of the payments that he'd made to the solicitors and to freeze his account. It didn't uphold his complaint and didn't freeze his account but it credited his account with £20 as a gesture of goodwill. Mr G wasn't satisfied with its response so complained to this service.

The investigator didn't recommend that this complaint should be upheld. He didn't think that there'd been a breach of contract or misrepresentation by the solicitors. And he didn't think that a claim under section 75 would be accepted for a dispute about the quality of solicitors. So he thought that it was reasonable for Marbles to have declined Mr G's claim. He also said that Mr G had a contractual agreement with Marbles to make the payments due on his card so he said that he wouldn't be able to ask Marbles to refund to Mr G the interest that he'd been charged.

Mr G has asked for his complaint to be considered by an ombudsman. He has responded in detail and says, in summary (and amongst other things), that:

- his letter of claim to the solicitors clearly sets out his allegations of breach of contract – and the blanket denial by them does not automatically follow that it's correct in what it says;
- it's incumbent on Marbles to obtain the full file of papers from the solicitors and for it to analyse them to establish whether the denial is correct under the Supply of Goods and Services Act 1982;
- it failed to do so which forms the basis of his complaint; and
- this service failed to obtain all necessary papers and to investigate his complaint;

and he's asked for a list of the documents, evidence and law that has been relied upon by the investigator to reach his conclusion. The investigator has provided a list of the documents on which he relied to Mr G.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We offer an informal dispute resolution service. We try to resolve complaints by customers about financial businesses by looking at what we consider to be fair and reasonable in the circumstances – including the evidence that has been provided to us.

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 G's section 75 complaint about

Marbles, I must be satisfied that there's been a breach of contract or misrepresentation by the solicitors.

It's clear that Mr G instructed a firm of solicitors to advise him in connection with some litigation about a construction dispute. He made a payment to the solicitors using his Marbles credit card and other payments by other means. He then complained to the solicitors about the way that it had dealt with the litigation. It didn't uphold his complaint and said that the costs had been properly incurred. Mr G then complained to Marbles. It said that it wasn't clear that there was any cause of action and that it would expect to see more evidence of the breach of contract and the loss that has resulted. But it credited £20 to Mr G's account as a gesture of goodwill.

I have considered the evidence that has been provided. Mr G says that the legal services weren't provided to him in accordance with the legal requirements – but the firm of solicitors hasn't accepted his complaint. It set out in a letter to Mr G in 2013 the basis on which it would be acting on his behalf in connection with his commercial litigation about a construction dispute. Mr G hasn't provided any third party evidence to support his complaint. I consider that there are more appropriate means for Mr G to challenge the solicitors about the service that he's received and about its charges. I'm not persuaded that Mr G has provided enough evidence to show that there's been a breach of contract or misrepresentation by the firm of solicitors. Nor am I persuaded that Mr G has provided enough evidence to show that he isn't liable for the solicitor's charges. So I find that it wouldn't be fair or reasonable for me to require Marbles to refund to Mr G any of the solicitors' charges.

Mr G has complained about the service that he received from the solicitors. He then complained about the service that he received from Marbles and it credited £20 to his account as a gesture of goodwill. He then complained to this service and complained about the service that he'd received from the investigator. But I'm not persuaded that Mr G has provided enough evidence to show that Marbles (or the investigator) has acted incorrectly in its dealings with his claim. And I find that it wouldn't be fair or reasonable for me to require Marbles to take any action in response to Mr G's complaint.

my final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 1 July 2018.

Jarrold Hastings
ombudsman