

complaint

Mrs P complains about the service she's received from NewDay Ltd ("ND") in relation to her credit card account.

background

Mrs P says she received a phone call from a third party business that I'll call Business A, during which she agreed to buy three web addresses at a total cost of £400 plus VAT. She says the agent then told her he'd put a payment of £597 through her account. She says she immediately told the agent that wasn't what had been agreed, at which point he became nasty and rude. And she says she ended the call and immediately called ND and learned Business A had taken two payments totalling £955.80.

Mrs P also says she's over £1,000 out of pocket, with all the interest that's been added. She says it took ND too long to investigate the matter. And she says she's suffered a great deal of distress as a result of this appalling situation. So, she says she's been treated so badly that she thinks ND should pay her more than £250 compensation.

ND says it rejected Mrs P's claim under s75 of the Consumer Credit Act ("s75") because it was unable to establish that there'd been a breach of contract by Business A. It says it's been told by Business A that the terms and conditions were agreed to by Mrs P before the domain registration. It says once domain names are registered a reversal can't be actioned and refunds can't be processed. And it says unless evidence could be provided that Business A completed a domain registration Mrs P didn't request or it didn't provide the service she'd ordered, it couldn't uphold her complaint.

Our adjudicator thought Mrs P's complaint should be upheld and ND should pay her £250 compensation for the distress and inconvenience she'd experience as a result of its poor handling of this matter.

Mrs P disagreed with the adjudicator's conclusions. She thought the compensation should be higher.

So, the matter's been referred to me to make a final decision.

my findings

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

I've decided to partly uphold Mrs P's complaint and to require ND to pay her £250 compensation for the distress and inconvenience she's experience as a result of its poor handling of this matter. I'll explain why.

The information I've seen shows Mrs P contacted ND about this matter at the earliest opportunity. She persisted with her complaint. And she's been clear and consistent in saying she didn't agree to pay Business A anything more than £400 plus VAT.

I note correspondence from Business A includes the statement that 'All our calls are recorded and can be sent upon request'. I would've expected ND, as part of its investigation of Mrs P's complaint to have considered the possibility that the price of the domain names may have been misrepresented to Mrs P. And to have taken steps to obtain from Business A

a copy of the call during which Mrs P agreed to buy the domain names, to establish what was agreed about the price Mrs P would pay for the purchase she made.

I see Business A's told this service the call recording's no longer available. So, I think ND's failure to obtain this information when it was investigating Mrs P's complaint represents a missed opportunity to take account of information that would've been likely to be of critical importance in determining whether or not her claim under s 75 should succeed.

I don't know whether the call recording would've enabled Mrs P to make a successful claim under s75 for misrepresentation. So, I can't require ND to pay Mrs P the difference between the amount she says she agreed to pay and the amount that Business A debited from her account. But I think it's reasonable for me to require it to pay her £250 compensation for the distress and inconvenience she's clearly experienced as a result of its failure to investigate the matter properly.

I acknowledge Mrs P thinks she should receive more compensation. But £250 is in line with the guidelines this service has for awarding compensation in circumstances of this nature. And I think it fairly reflects ND's responsibility for the distress and inconvenience she's been caused as a result of this situation.

So, I partly uphold Mrs P's complaint on this basis.

my final decision

I partly uphold Mrs P's complaint against NewDay Ltd. It must pay her £250 compensation for the distress and inconvenience she's experience as a result of its poor handling of this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 29 December 2018.

Robert Collinson
ombudsman