

## **complaint**

Mr K complains that NewDay Cards Limited will not refund to him the £3,000 arrangement fee that he paid for an investment in a land development. His complaint is made against NewDay under section 75 of the Consumer Credit Act 1974.

## **background**

Mr K used his NewDay credit card in September 2014 to pay £2,500 towards a £3,000 arrangement fee for an investment in a land development. The investment did not go ahead. Mr K asked the investment company to refund the arrangement fee. It didn't do so and Mr K complained to NewDay under section 75. He wasn't satisfied with its response so complained to this service.

The adjudicator didn't recommend that this complaint should be upheld. He concluded that the investment company refused to refund the fee because it felt that Mr K hadn't done all he could to secure a mortgage as he chose not to speak to its own mortgage brokers. He also concluded that the investment company's terms and conditions say that the fee is: "*...non-refundable if you decide not to proceed for any reason, unless expressly agreed by a company director ... in writing ...*".

Mr K has asked for his complaint to be considered by an ombudsman. He says, in summary, that: it was agreed that the emails and discussions would override the contract and agreement; the investment company misrepresented the investment to him; and he did talk to the investment company's mortgage brokers who suggested that he commit mortgage fraud. He also says that the investment company should be investigated for irregularities and mis-selling.

## **my findings**

I've considered all the available evidence and arguments to decide what is 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 has been a breach of contract or misrepresentation by the supplier. To be able to uphold Mr K's complaint about NewDay under section 75, I must be satisfied that there has been a breach of contract or misrepresentation by the investment company.

Mr K clearly feels very strongly that the investment company agreed to refund the arrangement fee in these circumstances. But the investment company's terms and conditions say that the fee is non-refundable without its written agreement. And I find that the email exchange between Mr K and the investment company doesn't show that the investment company agreed to refund the fee to Mr K. So I am not persuaded that there is enough evidence to show that the investment company agreed to refund the fee.

Nor am I persuaded that there is enough evidence to show that the investment company misrepresented the investment to Mr K or that it has committed a breach of contract. So I find that it wouldn't be fair or reasonable for me to require NewDay to refund the arrangement fee to Mr K or to take any other action in response to his complaint.

We offer an informal dispute resolution service for disputes between financial organisations and their customers. We have no regulatory or disciplinary role in relation to those financial organisations. And we have no investigatory, disciplinary or regulatory role in relation to other organisations, such as the investment company.

**my final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 23 March 2016.

Jarrold Hastings  
**ombudsman**