

complaint

Mrs H complains because NewDay Ltd has refused her request for a refund.

“M”, a limited company, represents Mrs H in her complaint.

our initial conclusions

Our adjudicator looked at Mrs H’s complaint that NewDay should give her compensation because of the rights she has under section 75 of the Consumer Credit Act 1974. She said she didn’t think it was fair or reasonable to ask NewDay to pay Mrs H because there was no valid debtor-creditor-supplier (“d-c-s”) relationship in this complaint.

NewDay accepted this recommendation. Mrs H did not and asked that an ombudsman review her complaint.

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 can well understand why Mrs H wants someone to take responsibility for her loss. She says she was scammed out of a considerable amount of money. I can only say it’s fair and reasonable for NewDay to compensate her if I think, in the circumstances, taking into account section 75 this would be the correct course to follow.

But section 75 requires a valid d-c-s relationship to be in place and it seems there’s none here. I say this for the reasons our adjudicator already explained in detail. M suggests that as the company Mrs H paid (“K”) is a professional advisor to the supplier (“W”) this means there was a valid d-c-s relationship M says this is because K only held the money for W or was its’ agent. M’s reasoning seems to go far outside of the meaning of the relevant provisions of the Consumer Credit Act with this analysis. I’ve got to take into account the meaning of relevant regulations as they stand - not as party might like them to be.

In all of the circumstances I think it’s not fair or reasonable to ask NewDay to refund Mrs H as she asks.

my final decision

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs H to accept or reject my decision before 28 September 2015.

Joyce Gordon
ombudsman