

## **complaint**

Miss R complains that NewDay Limited won't refund to her the money that she paid for two extra wide carpet to carpet door bars. Her complaint is made against NewDay under section 75 of the Consumer Credit Act 1974.

## **background**

Miss R used her NewDay credit card in September 2017 to pay £181.98 for two extra wide carpet to carpet door bars. But she says that only one was delivered and that it was bent. She complained to the supplier and it sent replacements to her by courier – but she didn't accept delivery of them as she hadn't been made aware that the supplier would be replacing the items. And she says that she asked the courier to take away the damaged item but the courier refused to do so. Miss R then claimed a refund from NewDay under section 75. It refunded £181.98 to her account - but it then re-debited that amount because the supplier had said that Miss R hadn't returned the damaged item. Miss R wasn't satisfied with NewDay's response so complained to this service.

The investigator recommended that this complaint should be upheld. He said that the supplier has breached the contract made with Miss R and he believed that she took all the relevant action she could in order to receive a refund from the supplier but she received no response to her e-mail asking for a courier to collect the damaged item. And he didn't believe that Miss R would've refused to give that item to the courier as she had no use for it and had asked for it to be collected by courier. So he concluded that it wasn't fair for NewDay to reject Miss R's section 75 claim and she should be refunded in full.

NewDay has asked for this complaint to be considered by an ombudsman. It says, in summary, that the supplier attempted to resolve the issues by delivering two replacement items to Miss R.

## **my provisional decision**

After considering all of the evidence, I issued a provisional decision on this complaint to Miss R and to NewDay on 13 September 2018. In my provisional decision I said as follows:

*"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. One of those circumstances is that section 75 only applies if the cash price of a single item is more than £100.*

*Miss R ordered two carpet bars for a total price of £181.98 - so I consider it to be reasonable to conclude that the price of each item was £90.99. And that is below the minimum limit required for a claim under section 75. So I consider that her claim under section 75 can't succeed. And NewDay made a chargeback claim to the supplier for it to refund the payment to Miss R. But the chargeback claim was defended by the supplier because it had attempted to deliver two replacement carpet bars to Miss R.*

*I sympathise with Miss R for the difficulties that she's experienced with the supplier. But the supplier arranged for two replacement carpet bars to be delivered to Miss R – but she didn't accept the delivery. And it offered to refund the cost of the carpet bars to Miss R if she returned the damaged item to it – but Miss R didn't do so and said that the supplier needed to send a courier to collect the damaged item. I'm not persuaded that it would be fair or reasonable in these circumstances for me to require NewDay to refund the cost of the carpet bars to Miss R – or to take any other action in response to her complaint”.*

Subject to any further representations by Miss R or NewDay, my provisional decision was that I wasn't minded to uphold this complaint.

Miss R hasn't responded to my provisional 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. Having done so, I'm not persuaded that I should change my provisional decision.

My provisional decision was sent to Miss R (using the address that she'd provided) on 13 September 2018 – and she was given two weeks to respond to it. As no response had been received, the investigator e-mailed her (using the e-mail address that she'd provided) earlier this month and gave her until the end of that week to respond. More than a week has passed since that deadline expired and no response has been received from Miss R.

### **my decision**

So my decision is that I don't uphold Miss R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 24 November 2018.

Jarrold Hastings  
**ombudsman**