

complaint

Miss D complains that NewDay Ltd rejected her claim under Section 75 Consumer Credit Act 1974 in respect of a payment to an agency to help make a payment protection insurance (PPI) claim.

background

In April 2015 Miss D paid an agency I'll call R £495 which introduced her to a business I'll call A which pursued PPI claims on her behalf. A obtained £6.58 for Miss D. She made a claim to the Legal Ombudsman which decided the matter in her favour and directed R to refund the £495, but it had ceased trading by this point.

Miss D made a claim under S75, but this was rejected by NewDay as it considered that R merely introduced A and A was the supplier of the service so the debtor-creditor-supplier link required by S 75 had been broken.

Miss D brought her complaint to this service and it was investigated by one of our adjudicators who recommended that it be upheld. He concluded there was a valid debtor-creditor-supplier relationship as R was providing a service of identifying if there was a valid claim and passing it on to A. It did not offer to pursue the PPI claim.

He noted the terms and conditions of Miss D's agreement with R which said:

For our services we charge you a fee of £495 which is refundable in the event that you do not receive any redress.

If you receive compensation less than the fee charged we will adjust our fees so that we will only charge you 30% plus VAT of the compensation received."

He thought that as Miss D had received less than the £495 in redress, but has received £6.58 from one bank she was entitled to a refund. He hadn't seen any evidence to suggest R carried out their contractual obligations by refunding Miss D. As such he considered there was a clear breach of contract and recommended NewDay should refund Miss D £492.66 (£495 minus 30% of £6.58 plus VAT).

NewDay didn't agree and said that there was no evidence that Miss D only got £6.58 back. It also argued that their understanding of the terms and conditions meant the reduction on the percentage of the charge is not that of the admin fee of £495.00 but the percentage they take from the refund. Therefore, if the refund amounted to £6.58, R would take only 30% of this plus VAT.

Miss D provided a letter from A confirming it had only obtained £6.58 compensation for her. NewDay then said that it believed she was entitled to 70% of £495 plus interest at 8% simple. It also agreed to credit the full £6.58 as a gesture of goodwill.

my findings

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

R was a company which assisted PPI claimants by identifying if a claim existed and then passing that on to a third party, A, which then investigated the claim further. I am satisfied there was valid debtor-creditor-supplier link in respect of the services R provided.

I am also satisfied that the terms and conditions are clear. R says it will charge a fee of £495, but if the compensation received is less the fee will be reduced to 30% of the compensation received plus VAT. In Miss D's case this was 30% of £6.58. Therefore I agree with the adjudicator that NewDay should refund Miss D £492.66 plus interest.

my final decision

My final decision is that I uphold this complaint and I direct NewDay Ltd to refund £492.62 plus interest at 8% simple from the date the sum was debited from her account until it is refunded. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 21 November 2016.

Ivor Graham
ombudsman