

## **complaint**

Mr E complains that NewDay Ltd rejected his claim under Section 75 Consumer Credit Act 1974 in respect of an investment. He also claims it has been harassing him for payment of his bill.

## **background**

In early 2017 Mr E paid £250 to a company I'll call B for the purposes of trading in binary options. He says he was told that he needed to invest a further £1,000, but Mr E refused. B refused to return his £250. He contacted NewDay and it made a chargeback request, but this was challenged by B. It said Mr E had signed the terms and conditions and it was entitled to keep the money.

Mr E said he hadn't ticked the online box to confirm his acceptance of the terms and conditions. NewDay considered whether he had a claim under Section 75, but it couldn't identify that there had been either misrepresentation or a breach of contract and so it told Mr E that he had to pay the £250.

Mr E brought his complaint to this service where it was considered by one of our investigators who didn't recommend that it be upheld. She explained that NewDay had no control over the success or otherwise of the chargeback. It had tried to get the money back, but under the rules of the credit card operator B was able to challenge the request.

She also considered B's terms and conditions and concluded that these hadn't been broken by B. She also noted that in order to open an online account with B the customer had to agree to its terms and conditions. B explains that binary options are a risky investment and she couldn't find any guarantee that his initial deposit would be returned. As such she didn't consider a successful claim could be made under Section 75.

Mr E didn't agree and said he had been scammed.

## **my findings**

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

This complaint has been submitted as a claim under section 75 of the Consumer Credit Act 1974. Section 75 offers protection to customers who use certain types of credit to make purchases of goods or services. Under section 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services, if there has been a misrepresentation or breach of contract on the supplier's part.

While I have every sympathy with Mr E I find myself in agreement with the investigator. The chargeback was unsuccessful and I can see no grounds that would allow a successful claim under Section 75. I appreciate that Mr E believes he has been the subject of a scam, but I have seen nothing to show that he was misled by B or that it breached its terms and conditions.

I appreciate that he says he didn't agree to the terms and conditions, but I gather it is part of the requirements of investing with B that a customer does tick the relevant box. As such I am unable to uphold this complaint.

**my final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 27 November 2017.

Ivor Graham  
**ombudsman**