

## **complaint**

Mr M complains that NewDay Ltd declined his claim under section 75 of the Consumer Credit Act 1974.

## **background**

Mr M has a credit card issued by NewDay Ltd.

Mr M bought a timeshare which he subsequently had reason to complain about. Mr M asked a third party to help him recover the monies he had paid for his timeshare by bringing legal proceedings abroad. He also made a claim under section 75 of the Consumer Credit Act. The section 75 claim was successful. Following that success, Mr M complained to NewDay that the third party he had paid to help him recover the monies he had paid for his timeshare was in breach of contract and guilty of misrepresentation. In other words, Mr M made a section 75 claim against NewDay as he had also used a credit card to pay the third party.

NewDay asked Mr M for evidence that the third party was in breach of contract or guilty of misrepresentation. Mr M says he supplied evidence of this. NewDay says the evidence was insufficient and did not uphold Mr M's section 75 claim. Mr M complained to us.

Our adjudicator did not recommend that Mr M's complaint be upheld as he considered Mr M had provided insufficient evidence that the third party had breached its contract with Mr M or was guilty of misrepresentation. Mr M disagreed with our adjudicator's recommendations and asked for an ombudsman to review his complaint.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I can see that Mr M agreed with a third party that it would help him recover monies he had paid for a timeshare by bringing legal proceedings abroad. Mr M paid that third party and used his credit card. I can see that the third party began proceedings, that Mr M and the third party exchanged correspondence about this and that the third party obtained a settlement offer for Mr M. Having looked at the contract that Mr M entered into with the third party, I cannot say that the third party – given the evidence I have seen – was in breach of contract.

Nor can I say – given the evidence I have seen – that the third party was guilty of any misrepresentations. In the circumstances, I agree with our adjudicator that NewDay was not under an obligation to reimburse Mr M under section 75 of the Consumer Credit Act 1974.

## **my final decision**

My final decision is that I am not upholding this complaint.

Nicolas Atkinson  
**ombudsman**