

complaint

Miss W complains that NewDay Limited won't refund to her the money that she paid for a bed and mattress. Her complaint is made against NewDay under section 75 of the Consumer Credit Act 1974.

background

Miss W used a store credit card provided by NewDay to pay £219.98 in November 2015 for a bed and mattress. She says that she was sent the wrong mattress and that the bed was missing parts. She also says that it broke causing her to injure her shoulder. She complained to NewDay under section 75 but wasn't satisfied with its response so complained to this service.

The adjudicator didn't recommend that this complaint should be upheld. He said that NewDay had made a chargeback claim to the bed supplier but that it had been defended by the supplier. And NewDay had provided evidence to show that it informed Miss W that her account would be charged if the chargeback was successfully challenged. NewDay requested information from Miss W about her purchase and an independent report about the broken bed to decide whether there'd been a breach of contract or misrepresentation. But Miss W hadn't provided it with any information to support her claim other than photographs which showed that there was a stain on the mattress. So the adjudicator couldn't see that there'd been a breach of contract or misrepresentation by the supplier.

Miss W has asked for her complaint to be considered by an ombudsman. She has provided a photo of part of her medical record which refers to injuries caused by a broken bed.

my findings

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

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. To be able to uphold Miss W's complaint about NewDay under section 75, I must be satisfied that there's been a breach of contract or misrepresentation by the bed supplier.

Miss W complained to NewDay about the bed and mattress in January 2016. NewDay made a chargeback claim to the bed supplier - but the chargeback claim was defended. NewDay then asked Miss W for further information to determine whether there'd been a manufacturing fault with the bed. It requested an independent report about the bed and a copy of the invoice. Miss W didn't provide that information so it didn't consider her claim under section 75 any further. Miss W complained to this service and she provided a photo of the bed and she has recently provided a photo of part of her medical record.

But I'm not persuaded that there's enough evidence to show that the bed wasn't of satisfactory quality when it was supplied to Miss W or that some parts were missing. Nor am I persuaded that there's enough evidence to show that Miss W was provided with the wrong mattress or that the mattress that she received was stained. Miss W says that the bed broke which caused her a shoulder injury. But I'm not persuaded that there's enough evidence to show that Miss W's shoulder was injured as a result of the bed breaking.

So I'm not persuaded that there's enough evidence to show that there's been a breach of contract or a misrepresentation by the bed supplier. And I find that it wouldn't be fair or reasonable in these circumstances for me to require NewDay to refund to Miss W under section 75 the money that she paid for the bed – or to take any other action in response to her complaint.

my final decision

For these reasons, my decision is that I don't uphold Miss W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 23 February 2017.

Jarrold Hastings
ombudsman