

### **complaint**

Mr H complains Newday Ltd (trading as Aqua) should refund the cost of his holiday under section 75 of the Consumer Credit Act 1974.

### **our initial conclusions**

Our adjudicator says for section 75 to apply there has to be an unbroken relationship between the debtor (Mr H), the creditor (Newday) and the holiday supplier. But Mr H paid the supplier via Paypal. So the relationship was broken and section 75 doesn't apply here. Mr H says he paid online and had to use Paypal. And he's a longstanding customer of Newday, so it should refund the money.

### **my final decision**

To decide what is fair and reasonable in this complaint, I have considered everything that Mr H and Newday have provided. I can see how strongly Mr H feels about what happened. And I understand he would like to rely on section 75 to get a refund from Newday – because it provided credit for him to buy the holiday he's dissatisfied with.

Under section 75 a provider of credit may be liable for substandard goods or services in certain circumstances. But the Consumer Credit Act says very specific requirements must be met for such a claim to succeed. Mr H sent his payment via Paypal. And I'm satisfied that means it falls outside the three party debtor-creditor-supplier relationship necessary for s75 to apply.

I appreciate Mr H says the website he used only accepted payment by Paypal. But I can't fairly hold Newday responsible for that. I realise this is likely to disappoint Mr H, but I can't reasonably require Newday to refund the money.

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

**Under the rules of the Financial Ombudsman Service, I am required to ask Mr H either to accept or reject my decision before 6 January 2015.**

*Claire Jackson*

*ombudsman at the Financial Ombudsman Service*

The ombudsman may complete this section where appropriate – adding comments or further explanations of particular relevance to the case.

#### **ombudsman notes**

##### **“S 75 Liability of creditor for breaches by supplier**

- (1) If the debtor under a debtor-creditor-supplier agreement ...has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor...”

Consumer Credit Act 1974

#### **what is a final decision?**

- A final decision by an ombudsman is our last word on a complaint. We send the final decision at the same time to both sides – the consumer and the financial business.
- Our complaints process involves various stages. It gives both parties to the complaint the opportunity to tell us their side of the story, provide further information, and disagree with our earlier findings – before the ombudsman reviews the case and makes a final decision.
- A final decision is the end of our complaints process. This means the ombudsman will not be able to deal with any further correspondence about the merits of the complaint.

#### **what happens next?**

- A final decision only becomes legally binding on the financial business if the consumer accepts it. To do this, the consumer should sign and date the acceptance card we send with the final decision – and return it to us before the date set out in the decision.
- If the consumer accepts a final decision before the date set out in the decision we will tell the financial business – it will then have to comply promptly with any instructions set out by the ombudsman in the decision.
- If the consumer does not accept a final decision before the date set out in the decision, neither side will be legally bound by it.