

## **complaint**

Mr F has complained NewDay Limited, trading as Aqua, won't pay the costs of repairing a ring which he bought for his wife. He made a claim to NewDay under section 75 of the Consumer Credit Act 1974.

## **background**

In October 2017 when Mr F and his wife were travelling overseas, he bought a ring to give to his wife six months later for a special anniversary. He paid for this with his Aqua credit card. They were again overseas for their anniversary when Mr F gave his wife the ring. When they consulted local jewellers to get matching items made, he was informed the ring was faulty. He was told the *"casement was also found to be very weak with open sides which were very thin"*. This jeweller didn't recommend repair.

Mr F made a claim to Aqua as he'd bought the ring on his credit card. They rejected his claim as they felt he'd signed to accept the ring in the condition it was in regardless. Mr F brought his complaint to the ombudsman service.

Our investigator asked Mr F to get independent local advice which he did. He got a quotation for repairs which amounted to £125. This would resolve the fault. Our investigator told Aqua they should pay for the repairs as the item Mr F purchased didn't meet the requirements of the Consumer Rights Act 2015. He also asked them to pay Mr F an additional £60 compensation for the delays in sorting this out.

Aqua agreed to pay £60 but wouldn't pay the costs of repair. Mr F's complaint has been referred to an ombudsman to make a decision.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've reached the same conclusion as our investigator and for roughly the same reasons. I'll explain why.

Section 75 of the Consumer Credit Act 1974 allows a customer to claim a refund of money for goods or services they paid to a supplier when entering into an associated credit agreement, like Mr F's credit agreement with Aqua. Specific conditions apply to those claims. Aqua needs to consider whether there was a breach of contract or misrepresentation by the company that led to Mr F making this purchase.

It's worth clarifying I'm not deciding Aqua's liability under section 75 of the Consumer Credit Act. We certainly take into account the relevant law and that includes section 75. But we decide cases by considering what is fair and reasonable, as statute requires us to do. What I'm deciding is whether Aqua did enough in considering Mr F's complaint. And if they didn't, what else should they now do.

If there was a misrepresentation or breach of contract in the supply of the goods then it's fair to ask Aqua to put things right.

*was there a breach of contract in the supply of goods?*

Mr F bought a special ring – which has been independently valued at £1,450 – as a present for his wife. He bought this overseas planning to give it to his wife six months later for their anniversary. It was only when the ring was inspected at some jewellers; the faults within the fabric of the ring – essentially a weak shank – were noticed.

Aqua has said Mr F bought the ring and accepted the retailer's terms and conditions which allowed for no refund. This means Aqua has no liability to sort out repairs. I don't agree. The Consumer Rights Act means that goods bought must be of a serviceable and appropriate quality. Mr F bought a not inexpensive ring for his wife. This was designed for her to wear regularly. All the evidence I've seen – including a report from overseas jewellers and a quotation for repairs from a more local-based independent jewellers – show that there's a fault. I believe the ring isn't fit for the purpose it was bought. I'm in no doubt there's a breach of contract.

Under section 75 Mr F can bring a like claim for that breach of contract against Aqua. Mr F has sought a quotation for repairs and hopes to have that done. This quotation seems more than reasonable. However as it was undertaken earlier this year there's a chance this may increase by the time Mr F gets the repairs done. Overall I'm satisfied Mr F can use the same independent jewellers to have the repairs carried out as undertook the quotation. He can then present the bill after the repairs to Aqua as evidence of the work he's had done.

Having considered all the evidence I'm going to be asking Aqua to pay for the repairs to the ring Mr F bought. Aqua initially paid £40 for the delay in reviewing Mr F's claim. Our investigator felt a further £60 should also be paid. I agree this is reasonable.

### **my final decision**

For the reasons I've given, my final decision is to instruct NewDay Limited, trading as Aqua, to:

- Pay for the repairs to the ring purchased by Mr F; and
- Give Mr F a further £60 compensation for the delays.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 23 January 2020.

Sandra Quinn  
**ombudsman**