

complaint

Mrs G complains that NewDay Limited will not refund to her the money that she paid for a pair of shoes. Her complaint is made against NewDay under section 75 of the Consumer Credit Act 1974.

background

Mrs G paid £140 in October 2013 for a pair of shoes using a store credit card provided by NewDay Limited. Within six months the upper came away from the sole of the left shoe. She asked the store for a refund and then complained to NewDay under section 75. It asked her to provide an independent report to show that the shoes were faulty when they were bought by her. She was not satisfied with its response so complained to this service.

The adjudicator recommended that this complaint should be upheld. He concluded that an independent report was not necessary and that, due to the durability of the shoes, there had been a breach of contract. He recommended that NewDay should refund the cost of the shoes to Mrs G.

NewDay has asked for this complaint to be considered by an ombudsman. It says, in summary, that evidence from an independent party must be provided to advise if the damage to the shoes was caused as a result of the quality or a mishap.

Mrs G says that NewDay initially refused to acknowledge that she had a claim under section 75 and did not take any action until after she had contacted this service and that, even then, its communication was unsatisfactory and it did not inform her of its final decision.

my findings

I have considered all the available evidence and arguments to decide what is 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 has been a breach of contract or misrepresentation by the supplier. To be able to uphold Mrs G's complaint about NewDay under section 75, I must be satisfied that there has been a breach of contract or misrepresentation by the supplier of the shoes.

There is no requirement under section 75 for an independent report to be provided. Mrs G has provided photographic evidence to show that the shoes have not been worn excessively and that the upper of the left shoe has come away from the sole. Given that the shoes have not been worn excessively, I consider that it is reasonable to expect the upper not to have come away from the sole of the shoe. I am persuaded that there is enough evidence to show that the upper of the left shoe has come away from the sole and I consider it to be more likely than not in these circumstances that the shoes were not of a satisfactory quality when they were supplied to Mrs G. As such I consider that there has been a breach of contract by the supplier.

NewDay is jointly liable for that breach of contract under section 75 and I therefore consider that it would be fair and reasonable for NewDay to rework Mrs G's account as if the payment of £140 had not been made in October 2013.

Mrs G first complained about the shoes in March 2014 and NewDay sent her its final response letter in May 2014 to say that she needed to provide an independent report in support of her section 75 claim. Although I do not consider that such a report was necessary, I am not persuaded that NewDay has otherwise dealt with Mrs G's complaint incorrectly and I therefore do not consider that it would be fair or reasonable for me to require it to pay any compensation to her other than as set out below.

my final decision

For these reasons, my decision is that I uphold Mrs G's complaint. In full and final settlement of it, I order NewDay Limited to:

1. Rework Mrs G's account as if the payment of £140 had not been made in October 2013, and - if that puts the account into credit - to pay interest at an annual rate of 8% simple on the credit balance for the periods that the account was in credit and to refund the credit balance to Mrs G.
2. If Mrs G has repaid the £140 (or any part of it) to NewDay, to pay interest on the amount that she has repaid at an annual rate of 8% simple from the date of payment until the date of settlement.

If NewDay deducts tax from the interest element of my award, it should send Mrs G a tax deduction certificate when making payment. She can then use that certificate to reclaim the tax if she is entitled to do so.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs G to accept or reject my decision before 1 May 2015.

Jarrold Hastings
ombudsman