

## **complaint**

Mr L complains that it took NewDay Ltd ("NewDay") too long to process his claim under section 75 Consumer Credit Act ("section 75").

## **background**

Mr L bought a mobile phone in November 2017. He paid for it with a credit card provided by NewDay. But the phone took too long to arrive so he cancelled the order. But the order arrived regardless and Mr L noticed the seal was broken. He contacted the merchant and they agreed to a refund but they wanted Mr L to cover the postage cost to return the phone to Hong Kong.

Mr L didn't want to pay these charges and, getting nowhere with the merchant, he contacted NewDay in January 2018. He said he wanted to raise a claim under section 75 as he believed NewDay, as the provider of credit, were jointly responsible for the issue.

NewDay didn't think a section 75 claim was necessary. They processed a successful chargeback request with the merchant and Mr L's money was returned to him. But when the merchant didn't receive the phone back the chargeback was reversed and the money taken back out of Mr L's account. Mr L explained that he did ask NewDay to cover the postage but they didn't respond.

NewDay initially insisted Mr L exhaust his claim with the merchant before raising a section 75 claim with them but eventually they conceded and approved his claim, returning his money in November 2018.

Mr L said it took far too long for NewDay to approve his claim and he wanted compensation from them.

But NewDay paid Mr L £50 as they realised they'd exceeded the eight week timescale in which they were required to respond to his complaint. But they didn't accept that their process was wrong. They said they would always endeavour to raise a chargeback first and they thought they'd followed the correct process.

But Mr L was still disappointed. So he referred his complaint to this service and our adjudicator provided her view. She thought NewDay had taken too long. She noted that Mr L had first raised his section 75 claim in January but wasn't reimbursed until November 2018. He'd had to submit information again to NewDay in late February when it was clear NewDay hadn't understood the phone hadn't been returned or provided any advice on the postage concerns. The adjudicator thought NewDay had all the information they required in January and should therefore have processed the claim. So she suggested that NewDay pay Mr L a small amount of compensation. She thought £50 was reasonable in the circumstances.

But NewDay disagreed. They said they were right to raise a chargeback first but when the merchant had later rejected the chargeback, as the phone hadn't been returned, they said Mr L delayed the process as he wouldn't give answers to security questions during a call back they made to him in June. They said they didn't hear from Mr L again until September when they proceeded to approve his section 75 complaint. So they asked for a final decision by an ombudsman.

## **my findings**

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

I agree with the adjudicator's view and for similar reasons. Please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made, in part or whole, with a credit card, it might be possible to recover the money paid through a chargeback scheme or a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, a finance provider can be responsible for a breach of contract or a misrepresentation made by the supplier.

Section 75 is a little technical. It was established as it was understood that the legal right a consumer has against a merchant may not be enough protection for them. So section 75 established a liability on the provider of credit as it was believed they would have more leverage over the merchant to resolve the issue and would, in any case, be less inhibited by the expense of suing the merchant.

Here Mr L had a right to reject his phone and get his money back if he did so within the 14 day cooling off period - which he did. And NewDay rightly approved his section 75 claim, albeit not for about a year.

I don't think it's reasonable for Mr L to have been kept waiting for so long. NewDay may have wanted to raise a chargeback first but Mr L had asked them to approve a claim under section 75. And the issue didn't have to be raised with the merchant first as NewDay had joint responsibility for it. He'd provided all the information NewDay needed to approve a section 75 claim when he wrote to them in January. He'd included photographs of the damage to the seal, the invoice and the email communications he'd had with the merchant. And it was clear that the merchant had refused any liability for postage charges. The complaint should have been resolved on around that time but wasn't. So I think NewDay should compensate Mr L for the delay he experienced and, in the circumstances, I agree with the adjudicator that £50 would be reasonable.

**my final decision**

For the reasons I've given above I uphold this complaint and ask NewDay Ltd to pay Mr L compensation of £50 for the inconvenience he's experienced.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 17 June 2019.

Phil McMahon  
**ombudsman**