

complaint

Mr C complains that NewDay Limited won't refund to him the money that he paid for some in-car multimedia audio visual equipment. His complaint is made against NewDay under section 75 of the Consumer Credit Act 1974 and the chargeback rules.

background

Mr C used his NewDay credit card in September 2017 to pay £589.98 for some in-car multimedia audio visual equipment. When he had it installed he realised that it wasn't working correctly so he contacted the supplier. He says that he was told that he needed to send the equipment to a third party service centre for a repair. He wanted the equipment replaced or a refund – so he contacted NewDay. It made a chargeback request to the supplier – but it was defended by the supplier because Mr C hadn't sent the equipment to the service centre. So it considered Mr C's claim under section 75 – but it concluded that there hadn't been a breach of contract or misrepresentation by the supplier. It paid him £15 to cover his call costs and £30 compensation for the length of time it'd taken to investigate his complaint. But Mr C wasn't satisfied with its response so complained to this service.

The investigator didn't recommend that this complaint should be upheld. She didn't think that there'd been a breach of contract or misrepresentation by the supplier. But she said that the compensation that NewDay had paid to Mr C was fair in the circumstances. So she thought that NewDay had treated Mr C fairly and wouldn't be asking it to do anything further.

Mr C has asked for his complaint to be considered by an ombudsman. He says, in summary, that he had a contract with the supplier so didn't want to send the equipment to a third party and that the equipment was faulty when it was sold to him. And he says that he wants a refund of the money that he paid for the equipment, all late payments charges to be removed from his account, any mention of this removed from his credit file and compensation from NewDay.

my findings

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

Mr C bought the equipment in September 2017 and says that it was faulty when he bought it. But he didn't contact the supplier (or NewDay) until about two months later. The supplier said that its terms and conditions provide for a replacement if the equipment is returned within 14 days or a repair at its third party service centre if the equipment is returned after more than 14 days.

There's no right for a consumer to require that a chargeback claim be made. But if the right to make a chargeback claim exists under the applicable scheme rules – and if there's a reasonable prospect of success – I consider it to be good practice for a chargeback claim to be made.

When Mr C contacted NewDay it requested a chargeback from the supplier. But the chargeback was defended because the supplier said that it had offered Mr C a repair by its third party service centre but he'd refused to send his equipment to the third party. So it says that it complied with its terms and conditions. And I consider that NewDay acted correctly by making a chargeback request – even though it wasn't successful.

Mr C then claimed a refund from NewDay under section 75. But NewDay said that there hadn't been a breach of contract or misrepresentation by the supplier because it had followed its terms and conditions – and Mr C hadn't sent the equipment to the third party service centre for a repair. It paid Mr C £15 to cover his call costs £30 compensation for the length of time it'd taken to investigate his 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 Mr C's complaint about NewDay, I must be satisfied that there's been a breach of contract or misrepresentation by the supplier and that NewDay's response to his claim under section 75 wasn't fair or reasonable. I'm not determining the outcome of Mr C's claim under section 75 as only a court would be able to do that.

I'm not persuaded that there's enough evidence in these circumstances to show that there's been a breach of contract or misrepresentation by the supplier. Mr C didn't contact the supplier about a fault with the equipment until two months after he'd bought it and the supplier says that it only replaces equipment that is returned to it within 14 days. And it says that it told Mr C that he could send his equipment to a third party service centre for a repair – but Mr C refused to do so. It was Mr C's decision not to send his equipment to the third party service centre – and I'm not persuaded that it's unfair or unreasonable for the supplier to offer a repair by a third party service centre. And I don't consider that Mr C was entitled to a refund of the money that he'd paid for the equipment in these circumstances.

So I consider that NewDay responded fairly and reasonably to Mr C's claim for a refund under section 75. It paid £15 to Mr C to reimburse him for his call costs – and it paid him £30 to compensate him for its delay in investigating his complaint. I find that to be fair and reasonable. And I find that it wouldn't be fair or reasonable in these circumstances for me to require NewDay to refund to Mr C the money that he paid for the equipment – or to take any other action in response to his complaint.

I'm not persuaded that there's enough evidence to show that the late payment charges have been applied to Mr C's account incorrectly – or that NewDay should be required to remove any adverse information from his credit file. Mr C says that he's now unemployed. If he's suffering financial difficulties, I suggest that he contacts NewDay about those difficulties. It's required to respond to any financial difficulties that he's suffering both positively and sympathetically.

my final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 13 April 2019.

Jarrold Hastings
ombudsman