

complaint

Mr P complains that NewDay Limited won't refund to him the money that he paid for some car repairs. His complaint is made against NewDay under section 75 of the Consumer Credit Act 1974.

background

Mr P's car had a blown head gasket in April 2015 which was repaired by a garage. He was quoted £800 to £900 for the repair – but the garage discovered that a replacement engine was required so the cost increased to £1,030.11. Mr P paid £850 of that using his NewDay credit card. The car broke down again so Mr P complained to the garage. He paid £78 for a diagnostic report. The garage then bought the car from him for £600 and reimbursed £78 to him for the report. He claimed the repair costs of £1,030.11 from NewDay under section 75. He wasn't satisfied with its response so complained to this service.

The adjudicator recommended that this complaint should be upheld. She concluded that having paid over £1,000 for the repairs, Mr P wouldn't have accepted £600 for the car in settlement of the matter. But she considered that the head gasket repair had cost less than the full amount paid by Mr P – so she recommended that NewDay should refund £900 to him. NewDay had credited £50 to Mr P because he hadn't received a response to his letter. But the adjudicator recommended that the compensation should be increased to £100 because of the poor customer service that Mr P had received.

NewDay has asked for this complaint to be considered by an ombudsman. It says, in summary, that the garage emailed Mr P in December 2015 and offered him £600 for his car as a final solution to his claim.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr P and to NewDay on 15 June 2016. In my provisional decision I said as follows:

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

There doesn't seem to be any dispute that Mr P experienced further problems with his car after the repairs were carried out in the spring of 2015. Nor does there seem to be any dispute that the garage bought the car from him for £600. Mr P has claimed the cost of the repairs from NewDay under section 75. NewDay says that the garage paid £600 in full and final settlement of Mr P's claims. And having reviewed the e-mail from the garage to Mr P at the beginning of December 2015, I agree with NewDay.

That e-mail says:

"I appreciate your candour in this matter and thank you for the email. We do pride ourselves on both workmanship and customer care and therefore take this matter very seriously.

We have, again, contacted both [motoring organisations] with your latest email and have asked for their advice on a final solution to this situation.

[They] feel that we have been thorough and fair in our approach so far. As we believe we have acted in good faith in all our dealings with this matter, the [motoring organisation] have made one final suggestion, that we purchase your vehicle as a gesture of good will at market value as a full and final settlement. I take on board the two values you have submitted to us and are willing to offer you a sum of £600.

This is our final offer as a solution. If you find this unacceptable please feel free to pursue this with [motoring organisation] and we will abide by their resolution”.

I find it to be more likely than not that the garage’s offer was made in “in full and final settlement” of Mr P’s claim against the garage. Mr P accepted that offer and settled his claim against the garage. And that settlement stops any claims that he would otherwise have against NewDay under section 75. So I find that it wouldn’t be fair or reasonable for me to require NewDay to refund to Mr P any of the money that he paid for the repairs.

But I agree with the adjudicator that the customer service that Mr P has received from NewDay hasn’t been acceptable. It has credited £50 to his account. And I consider that it would be fair and reasonable for it to pay (not credit) a further £50 to him.

Subject to any further representations by Mr P or NewDay, my provisional decision was that I was minded to uphold this complaint in part.

Mr P has responded to my provisional decision and says, in summary, that:

- it’s preposterous that he agreed that the garage purchasing his car was full and final settlement regardless of what its e-mail to him said;
- having requested a full refund (which would have been in addition to getting a similar payment for the car from a third party) he wouldn’t have dropped his claim against the garage by just selling his car to it;
- the garage has breached its obligations to him - for which NewDay is equally liable – and whilst he had use of the car for a short period following repair (so would be happy to accept a reduced amount in comparison to the total amount) he is furious that he will receive an insulting payment from NewDay of £50 and effectively lose over £1000 because of a company’s failure to meet its obligations to its customer; and
- he will take every step possible to overcome the decision.

my findings

I have considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint. Having done so, I’m not persuaded that I should change my provisional decision. Mr P and the garage give different accounts of these events. So I have to rely on the other evidence that is available. I consider that the e-mail from the garage to Mr P clearly sets out that the payment of £600 for Mr P’s car was in full and final settlement of his claims. That may not have been what Mr P had meant or intended, but I consider the e-mail to have been clear: and the garage then paid £600 to Mr P for his car in full and final settlement of his claims. So I find that it wouldn’t be fair or reasonable for to require NewDay to refund to Mr P any of the money that he paid for the repairs.

But the customer service that Mr P received from NewDay hasn't been acceptable. It has credited £50 to his account. And I consider that it would be fair and reasonable for it to pay (not credit) a further £50 to him.

my decision

For the reasons set out above, my decision is that I uphold Mr P's complaint in part. In full and final settlement of it, I order NewDay Limited to pay a further £50 to Mr P.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr P to accept or reject my decision before 5 September 2016.

Jarrold Hastings
ombudsman