

complaint

Mrs U complains that NewDay Ltd rejected her claim under Section 75 Consumer Credit Act 1974 in respect of a door.

background

In April 2016 Mrs U met with a salesman from a company I'll call S who gave her a quote for a new door for some £3,300. Mrs U agreed the specifications with S and paid a 50% deposit. S then took the full measurements and made technical drawings which Mrs U signed off. This allowed S to start production. At this point it notified Mrs U that it couldn't make the door for the price quoted and refunded her deposit.

Mrs U supplied provided a quote for a door from a different supplier for some £7,800 to NewDay and asked it to refund the additional monies she had to pay towards it. But NewDay declined Mrs U's request, stating that she had no contract with S and therefore no claim. It said that despite Mrs U having paid a deposit; the specifications had not been agreed, so the terms of the contract were not settled and there was no final contract.

Mrs U brought her complaint to this service where it was investigated by one of our adjudicators who recommended that it be upheld in part. She considered once S sent Mrs U an invoice a contract had been established. This had been confirmed by the former director of S who had sold the door to Mrs U. As such she considered there had been a breach of contract by S when it changed the agreed price.

However, she didn't think the alternative quote supplied by Mrs U was reasonable. She asked S for a quote for the door it had agreed to supply Mrs U and this came to some £4,716. This was £1,416.92 more than the original quote and the adjudicator thought NewDay should refund this sum to Mrs U subject to her providing evidence that she had spent this sum, or a greater amount, on a new door. She also thought Mrs U should receive interest at 8% simple on the deposit she had paid from the date of payment until it was refunded.

Mrs U had also claimed of the cost of several door fitting she had purchased separately. The adjudicator initially thought these should be refunded, but later concluded that these were available for use in any new door Mrs U might buy.

NewDay didn't agree and said it was Mrs U's choice to pay more for another door. It also didn't accept there had been a breach of contract. Mrs U felt she should be paid the difference between the quote from S and the later one she obtained.

my findings

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

My role isn't to decide whether or not Section 75 applies here. Rather, I'm required to decide what, if anything, NewDay should do to resolve this complaint. In doing that, I must decide what I think is fair and reasonable, having regard to (amongst other things) any relevant law. Relevant law includes Section 75.

I am satisfied that Mrs U had entered into a contract with S before it concluded it couldn't manufacture the door for the price agreed. After the initial quote was given S took detailed measurements and these were agreed by Mrs U. There were then delays by S and Mrs U sought confirmation of a date for fitting to be told on one occasion that the door had been manufactured. It is clear to me that there has been a breach of contract by S. It agreed a price and specifications with Mrs U and only then did it walk away from the agreement.

That said I don't consider that NewDay should be held responsible for paying for the quote Mrs U subsequently obtained. As the adjudicator has pointed out that quote was significantly higher and may well have been to a higher specification. I think that provided by S is reasonable and I consider NewDay should pay Mrs U a maximum of 1,416.92 to cover the additional cost.

The above conclusion is subject to Mrs U providing an evidence of an order to NewDay. The order can be for a door of any value, but the maximum refund is £1,416.92. If the door costs less than £3,299.52, no refund will be due. I also agree that NewDay should pay Mrs U interest at 8% simple on her deposit of 1,649.76 from the date she paid it until the date it was refunded.

I don't consider NewDay should be responsible for any other costs.

my final decision

My final decision is that I uphold this complaint and I direct NewDay Ltd to pay Mrs U compensation as set out above. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs U to accept or reject my decision before 21 March 2017.

Ivor Graham
ombudsman