

## **The complaint**

Mr B complains about the outcome of a claim he made to NewDay Ltd in respect of an inspection and report carried out on his vehicle.

## **What happened**

Mr B bought a car in August 2022 and noticed shortly afterwards it had been extensively repaired. He came to an arrangement with the dealership who sold him the vehicle to supply a costing for repairs.

Mr B consulted a third-party garage who found and corrected issues with the wheel alignment and who told him the vehicle would need a structural evaluation if it kept pulling to the nearside. So, Mr B got in touch with a company I'll call 'C' and paid £161.03 using his NewDay credit card for an inspection to be carried out and a report of what the inspection found.

Mr B says he received confirmation from C that a mechanic who I'll call 'J' would be carrying out the inspection. However, he received a message on the morning of the inspection saying a mechanic who I'll call 'F' would now attend.

F carried out the inspection and completed the report. Mr B noticed the report said the vehicle was pulling slightly to the left. However, he says it was evident the vehicle was pulling severely to the left when F drove the vehicle and that F agreed. Mr B also saw there were things highlighted as good/green in the report for certain parts of the vehicle which he says weren't actually checked. Mr B says F told him he couldn't put on his report what he wanted to, because of constraints with the software he was using but promised to send Mr B an e-mail to set out what he'd seen.

Mr B then exchanged several messages with J who told him the report didn't need to be corrected as it was a true and accurate reflection of what was found on his vehicle. Mr B said that J wasn't present at the inspection so questioned how he could make that judgment.

Mr B asked NewDay for help in reclaiming his money back saying that he hadn't received the service he'd paid for. NewDay raised a chargeback, but this was defended by the merchant and NewDay didn't take this any further. Mr B then made a claim to NewDay under Section 75 of the Consumer Credit Act 1974 ("Section 75") but this was rejected. NewDay said there was no evidence of a breach of contract. However, they didn't tell Mr B the outcome of the claim and, upon receiving Mr B's complaint, paid him £50 for their poor service.

Our investigator didn't uphold Mr B's complaint. He said there was no evidence to suggest the information shown in the report was wrong, so didn't feel there had been a breach of contract or a misrepresentation. And he said that Mr B had received the services he'd paid for. So, he felt NewDay were correct to decline Mr B's Section 75 claim and to not take the chargeback any further.

Mr B didn't agree and so the matter has been passed to me to decide.

## **What I've decided – and why**

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

There are typically two avenues here that NewDay as the provider of credit could have considered.

### *Chargeback*

A chargeback is the process by which payment settlement disputes are resolved between card issuers and merchants, under the relevant card scheme rules.

What this means here is that NewDay can in some circumstances ask for a transaction to be reversed if there's a problem with the goods or services supplied by the merchant that the consumer paid for. But the chargeback process doesn't give the consumer legal rights and it isn't guaranteed to result in a refund. It all depends on what the merchant says in response to the request the bank submits.

There first must be a right to apply for a chargeback under the card scheme rules. And I'd consider it to be good practice for NewDay to raise a chargeback if it has a good chance of being successful.

It's important to note that chargebacks are decided based on the card scheme's rules, not the relative merits of a cardholder/merchant dispute. So, it's not for NewDay to decide whether the inspection and report was incorrect as Mr B claims or that he should get his money back for it. NewDay should raise the appropriate chargeback and consider whether any filed defence complies with the relevant chargeback rules. From what I've seen, that's what NewDay likely did in respect of the claim for £161.03. I'll explain why.

NewDay raised a chargeback for Mr B and the merchant defended the claim. And the merchant's defence was enough to mean the chargeback for that particular claim didn't succeed. Where the merchant challenges a chargeback, a bank doesn't have to carry out a detailed investigation into what actually happened to decide which party deserves the money. In fact, most banks won't take a chargeback any further if it's defended. In this case, NewDay decided not to take the dispute any further because they didn't think it had a reasonable prospect of succeeding. I can't say that NewDay made any mistake or acted incorrectly by making that decision. It wasn't the case for example that the merchant's defence was noticeably poor or lacking in credibility. And Mr B's response to the defence didn't include any additional evidence that might have led NewDay to think otherwise.

So, with all this in mind, I'm satisfied that NewDay dealt with Mr B's chargeback claim reasonably.

## Section 75

In deciding what I think is fair and reasonable I need to have regard to, amongst other things, any relevant law. In this case, the relevant law is Section 75 which says, in certain circumstances, if Mr B paid for goods and services, in part or whole, on his NewDay credit card, and there was a breach of contract or misrepresentation by the supplier, NewDay can be held responsible. I'm satisfied that the necessary criteria for Mr B to make a Section 75 claim was met.

I'll firstly briefly explain the nature of the contract Mr B entered into. In effect, Mr B used the services of C to find someone to inspect the vehicle and provide a report. C, I understand, operates as an independent booking platform who passed on Mr B's details to the company that J owns. J then presumably arranged for F to inspect the vehicle and compile the report. From the evidence I've seen, Mr B paid the company that J owns so it is with that company with whom Mr B had the contract to provide the services. So, any complaint about a breach of contract or misrepresentation would be in relation to the contract between Mr B and the company J owns.

There's no dispute that F inspected Mr B's vehicle. And I've seen a copy of the report. So, in the first instance, Mr B was provided with something that was agreed between the parties. I've considered what Mr B has said about the inspection and the report. I don't find though there is enough evidence to support his claim that the report didn't accurately cover what F saw and determined. F hasn't, for example, mentioned independently from what Mr B has said, that he had problems with the software and that he couldn't accurately detail what he'd seen.

The report details that the vehicle was pulling slightly to the left and I think that is the main point that Mr B disputes. However, I've seen no persuasive evidence that this wasn't representative of what F found. If I'd been presented with a report from an alternative source that cast significant doubt on that, or indeed differed significantly from the findings in the report F compiled, I might have been persuaded to side with Mr B on this point. But I haven't seen any such evidence.

I note Mr B was surprised that F turned up on the day, rather than J. However, I don't think this equates to a misrepresentation as Mr B has said if, as I suspect, J simply arranged for F to carry out the inspection and report. Mr B was, it seems, happy for F to go ahead with this.

Although J has defended the claims from Mr B, having not attended the vehicle on the day, that doesn't mean the contract wasn't performed as agreed. Having considered the matter, I haven't seen enough evidence of a breach of contract. As such, I don't think NewDay acted unfairly or unreasonably when they declined Mr B's Section 75 claim.

Mr B has mentioned that NewDay has damaged his credit file by crediting his account with £50 for the poor service which I have referred to in my decision. Mr B should refer this to NewDay separately so they can investigate. If Mr B consequently complains to NewDay about this, and isn't happy with their response, he can refer the matter to us.

**My final decision**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 1 December 2023.

Daniel Picken  
**Ombudsman**