

The complaint

Mr S complains that NewDay Ltd trading as John Lewis Credit Card (NewDay) didn't agree to refund him after he made a claim through Section 75 of the Consumer Credit Act 1974 (Section 75).

What happened

On 21 September 2021 Mr S and his wife entered a contract with a company I'll call IH for the supply and fitting of a conservatory. The overall cost of the work was £38,563 to be paid to the supplier and various tradespeople. A payment of £25,135 was due to be paid to IH and a further £13,428 to be paid directly to other parties. In September 2022 Mr S paid £9,567.50 towards the cost of the contract using his credit card with NewDay.

Work was undertaken to get planning permission, and some building services were provided but by December 2023 IH had become insolvent and let Mr S know they wouldn't be able to fulfil the contract.

Following the instructions of his legal adviser Mr S raised a Section 75 claim with NewDay to try and recover the £9,567.50 he had paid for the works using his credit card.

NewDay considered Mr S's claim under Section 75. It considered the information Mr S provided but explained that the claim fell outside the financial limits of Section 75 and so it couldn't help.

Unhappy with NewDay's response, Mr S referred the case to this service. One of our investigators considered the case and didn't think NewDay had acted unfairly.

Mr S didn't agree with our investigator's view, so his complaint has been passed to me for review and decision.

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.

I think it would be helpful for me to be clear here that I am only considering the actions of NewDay in this case, and I can't consider the actions of IH.

As Mr S made payment using his credit card, NewDay could have considered the claim through the chargeback process or under Section 75. So, I've considered both here.

Chargeback claims

Neither party has mentioned that the claim was (or should have been) considered under the chargeback scheme. However, it has a relatively broad application and there are no financial limits, so I thought it worth considering.

That said, whilst chargeback provides an avenue for a bank to raise a dispute with a

merchant where something has gone wrong, it doesn't cover all eventualities, and it isn't a legal right and isn't guaranteed to get a customer a refund. But I'd consider it good practice for a credit provider to attempt a chargeback where the circumstances are appropriate and there is a reasonable prospect of success. Strict rules and timeframes apply to chargebacks, and these are set out by the card scheme operator.

I can see that NewDay didn't attempt a chargeback in this case, and I don't think this was unreasonable. I say this because the claim would likely have been outside the given time frame for the relevant chargeback rule. The relevant rule for the chargeback gives 120 days for the customer to raise a claim from the date of the transaction. Where a performance date wasn't specified, an extra 30 days is given. So, Mr S needed to have raised a claim by 30 January 2023 at the latest. As Mr S didn't raise a claim until February 2024, the claim was made outside the timeframe for a chargeback to succeed. I appreciate Mr S didn't know about the insolvency until much later, but the chargeback rules are clear on the timeframes, and I can't change these.

Given this, I don't think it was unreasonable for NewDay to consider the claim under Section 75, and I've gone on to consider this further.

Section 75 Claims

Section 75 makes the provider of credit (NewDay in this case) equally liable where there is a case of misrepresentation or breach of contract by the supplier of goods or services financed by the credit. However, it will only apply when the criteria for a Section 75 claim are met. Section 75 won't apply to any single item where the supplier has attached a cash price of £100 or less, or more than £30,000. In addition to this there needs to be a direct relationship between the debtor, creditor, and supplier otherwise known as a DCS agreement.

I can see that the contract was in the name of Mrs S (Mr S' wife). Given this, I've considered more closely whether the DCS agreement was intact. Having done so I'm persuaded that Mr S was party to the contract. I say this because it's clear that he paid (in part) for the supply and fitting of the conservatory for the property he lived in full time with Mrs S. Given this, I agree that the case meets this part of the criteria for a valid claim.

However, I must also consider the cash price and whether this meets the criteria for a Section 75 claim. Having considered the contract carefully, I can see the cash price quoted is £38,563. So, I don't think it falls within the limits set for a successful Section 75 claim. I appreciate that Mr S was assured by a third party the payment would be within the limits of Section 75, but I don't agree that it is, and I'll explain why.

I think the main issue here is what can be considered as a single item under Section 75. Mr S says that as the contract is broken into subsections and some payments needed to be made directly to tradespeople, these should be considered as separate items. This would mean that the value of the contract reduced and fell within the limits set out for a valid Section 75 claim.

I understand Mr S' point of view here, but I don't think that the different sections he's referred to should be considered as separate contracts. I say this because it's clear that all sections were integral to the supply and installation of the conservatory, which is what Mr S and Mrs S had contracted with IH for. So, I think it's fair to conclude it's the conservatory that constitutes the single item here.

In addition to this, whilst IH asked Mr S to pay the tradespeople directly, it was IH who appointed them as subcontractors and provided a price for the works. I can't see that

separate contracts existed, independently of IH, between Mr S and the subcontractors. So, I don't think it would be reasonable to conclude that because of the payment arrangements and the format of the contract that this amounted to separate contracts.

Given this, I'm satisfied the single item here is the supply and installation of the conservatory. This means it's the total price of the contract that's relevant here when considering the parameters of Section 75 and I'm satisfied the price given to the supply and installation of the conservatory exceeds the limit of £30,000 set out in Section 75.

Although neither party has mentioned alternatives to Section 75, to ensure fairness, I have gone on to consider whether either Section 75A or Section 56 of the CCA would help Mr S in this case.

Whilst Section 75A allows for claims where the cash price of the goods or service exceeds £30,000. These goods or services must have been provided under a linked credit agreement – so a credit provided for a specific purpose and where the funds cannot be used for any other purpose. Mr S paid using his credit card and this wouldn't be classed as a linked credit agreement. So, I'm satisfied the criteria for a valid claim under Section 75A haven't been met.

Section 56 of CCA doesn't set out any financial limits but it is only concerned with claims of misrepresentation and doesn't apply where there has been a breach of contract. I've seen nothing here to say that IH made any misrepresentations that induced Mr S into entering a contract with them. The reason the claim has arisen is that IH have ceased trading and are no longer able to supply or install the conservatory. As this amounts to a breach of contract I'm satisfied Section 56 doesn't apply here.

I understand what a disappointment this must be to Mr S and I'm sorry that he has found himself out of pocket and without the conservatory he contracted for. However, I must decide whether I think NewDay has acted unfairly in its consideration of Mr S' claim. And on the evidence available I'm not persuaded NewDay has acted unfairly in this case.

My final decision

My final decision is that I don't uphold Mr S's complaint about NewDay Ltd trading as John Lewis Credit Card.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 July 2025.

Charlotte Roberts
Ombudsman