

The complaint

Mr L is unhappy with NewDay Ltd trading as John Lewis Partnership Card (NewDay)'s handling of his refund claim.

What happened

Mr L purchased a pergola via a 'Buy Now Pay Later' (BNPL) lender I shall call 'D' in February 2024 using his NewDay credit card. This purchase was from a supplier I shall call 'T' and he made an initial payment of £229.94 to D in February 2024 and three further payments of £150.00 in March 2024.

However Mr L says the goods were faulty on receipt and he subsequently couldn't resolve the issue with T directly in the following months. He therefore contacted NewDay in November 2024 asking to raise a Consumer Credit Act 1974 ("CCA") section 75 claim ("S75") against NewDay.

NewDay said there wasn't a valid S75 claim for Mr L's purchase with T as it didn't meet the technical requirements – particularly regarding the necessary debtor-creditor-supplier (DCS) agreement. They also didn't subsequently raise a chargeback claim as they felt it hadn't been brought within the time limits required under the card issuer rules. A final response letter (FRL) was then sent in December 2024 stating that as there was no valid DCS agreement with T, NewDay wouldn't be equally liable with them. They said they'd only be jointly liable to D as payments were made to them directly.

As Mr L remained dissatisfied he brought the complaint to our service to consider. Our investigator reached the same conclusions as NewDay for why they couldn't consider his claim.

As Mr L remained dissatisfied, he asked for an ombudsman to issue a final decision on the matter.

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've read and considered the evidence submitted by the parties but won't comment on it all – only the matters I consider to be central to this complaint. This isn't intended as a discourtesy but reflects my role in resolving disputes informally.

It's important to note that NewDay aren't the provider of the goods here – so in deciding what is fair and reasonable, I'm looking at their particular role as a provider of financial services. In doing so I note that because Mr L paid for this transaction using a NewDay credit card, both chargeback and a S75 claim could possibly help him. So in deciding what is fair and reasonable I've focussed on this.

Chargeback

Chargeback is the process by which settlement disputes are resolved between card issuers and merchants. A consumer isn't entitled to chargeback by right. But where there are grounds to raise one and it has reasonable grounds for success, it is good practice for one to be raised by the card issuer.

However, a chargeback isn't guaranteed to succeed and is governed by the limitations of the particular card scheme rules (in this case Mastercard). I've considered the relevant chargeback rules in deciding whether NewDay acted fairly.

Mr L made the purchase in February 2024 but he first raised the issue with NewDay in November 2024. Generally Mastercard's time limits require claims to be raised within 15 and 120 calendar days from the transaction date or the delivery date of the goods or services – although this may depend on what is prescribed by the relevant chargeback reason code. As this claim was raised with NewDay by Mr L outside that timeframe, I think it was reasonable for them to conclude the chargeback was out of time here.

In addition, the payment was made to the credit provider D, not directly to the supplier T. This means any chargeback would've had to be raised against D. But the complaint wasn't about D's service but was in relation to goods provided by T. And as T wasn't the merchant of record on the credit card transaction, I don't think there is an appropriate chargeback code here that would likely apply.

So while I appreciate NewDay could've considered the chargeback claim much earlier here during the claim process, it wouldn't have made a difference in any event as there wasn't a prospect of a successful claim for these reasons.

S75

Section 75 protects consumers who buy goods and services on credit. It says:

'If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.'

Section 12(b) of the CCA, which is relevant here, says that a DCS Agreement is a regulated consumer credit agreement being:

'a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier...'

An agreement falls within section 11(1)(b) if it's a regulated consumer credit agreement that is used to *'finance[s] a transaction between the debtor and a person (the "supplier") other than the creditor'*.

Put simply, for a claim under S75 to progress, there must be evidence to show there is the required DCS Agreement in place.

Was there the required DCS Agreement between Mr L, NewDay and T?

Mr L purchased the pergola using D's BNPL scheme which provides loans to allow consumers to separate a purchase cost over a series of instalments. I've reviewed Mr L's NewDay credit card statements for March and April 2024 during which the payments were made and they confirm these were made to D rather than T.

This means Mr L's credit card didn't finance the transaction (the purchase of the pergola) directly. Instead his credit card was used to repay the loan that he held with D for this purchase under the BNPL plan.

This also means there is no valid DCS agreement between Mr L, NewDay and T for a consideration of a breach of contract or misrepresentation by T. As this key legal requirement for a S75 claim wasn't met the claim couldn't succeed. I therefore consider NewDay didn't do anything wrong here when they concluded that Mr L didn't have a valid S75 claim arising from T's actions for these reasons.

I've focussed so far on the relationship between Mr L, NewDay and T. I'll now briefly consider whether a S75 claim could apply to the credit provider D.

What about an S75 claim against D?

In terms of NewDay's considerations of a potential claim against D, I'm satisfied Mr L's NewDay credit card statements confirm that instalments were made to D. And in turn it's likely D funded the purchase to T as the pergola was subsequently provided to Mr L

While NewDay say they were equally liable to D, this would only be relevant if the other S75 technical conditions are met such as the required cash price limits of the services provided – and I've not seen any evidence to confirm that's the case here.

Still, even if these were met, I've seen insufficient evidence that D hadn't appropriately provided the credit services under the BNPL agreement as expected. Therefore I don't think NewDay acted unfairly in concluding there wasn't a valid claim against D for breach of contract or misrepresentation of their services.

Customer Service

Mr L has also complained about NewDay's general handling of his claims. He said that he relied on NewDay's confirmation that they'd be jointly liable with D, and this meant he lost the opportunity to take further action regarding this dispute.

I've reviewed Mr L's initial claim call to NewDay in November 2024 and note that the advisor did refer the complaint to a colleague briefly for advice as she was aware of the fact there were limitations when a third party was involved. She then asked Mr L further questions in terms of his interactions with D which seemed to suggest that she'd been advised that NewDay were jointly liable with them.

I note she didn't discuss the fact that the claim against supplier T wasn't likely to meet the requirements of the DCS agreement and what this meant for Mr L. However correspondence was sent to Mr L the following day clarifying that (the BNPL lender's name has been substituted by 'D') *'NewDay were equally liable to D and not the company that you purchased goods from'*. They then asked Mr L for evidence to support his claim against D such as a copy of his agreement with them and their terms and conditions.

NewDay then subsequently sent an update to him in February 2025 stating that he didn't have a valid S75 claim. They said that S75 didn't extend to transactions made through BNPL services such as the one provided by D as there had been a break in the DCS required agreement between Mr L and T.

I don't think NewDay's handling of the claim was unreasonable here and they did make the DCS technical limitations clear from the outset and that they were unable to consider a like claim against T for these reasons. While NewDay did then attempt to explore other ways to address Mr L's complaint such as a S75 claim against D, I do think it was unlikely to succeed in any event for the reasons explained above. And while there is an argument to say that NewDay could've realised this earlier considering Mr L's reasons for complaining about the goods provided by T, I don't think NewDay acted unreasonably here in requesting further evidence from Mr L.

Following on from this, I also appreciate that Mr L believes he was unfairly penalised for using D's BNPL scheme as this has meant that he hasn't been afforded the protection under S75 that he would've had if he made the purchase directly. While I do appreciate his concerns, I must only look at whether NewDay acted fairly in terms of the application of the current legislation, and particularly the CCA with mind to S75. And I also can't say that NewDay's actions meant Mr L was denied other avenues to explore his complaint further.

So with consideration of all the available evidence, I can't say NewDay did anything wrong here in their administration of Mr L's claims and need do anything more.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 22 August 2025.

Viral Patel
Ombudsman