

The complaint

Mr D complains that NewDay Ltd declined his claim under section 75 of the Consumer Credit Act 1974 ("section 75"), after repairs to his car were not carried out to a satisfactory standard.

What happened

In February 2022 Mr D bought a used car for £12,500. It had been first registered in January 2012 and at the time of sale had covered approximately 113,000 miles.

In January 2023 an MOT inspection was carried out. The inspector advised that there was a small oil leak from the front of the engine area. Mr D had been unaware of the leak, and he had not had to top up the oil since he bought the car. A local mechanic advised that the leak was not an immediate concern. Mr D continued to drive the car until August 2023, when he took it to a mechanic, R, to have the leak inspected and a general health check carried out.

R's invoice indicates that the following work was carried out:

- The oil leak was investigated, and leaks were found from the rocker cover gasket and front crankshaft sea.
- The rocker cover gasket and front shaft seal were replaced.
- A rear air spring was replaced.
- Worn brake pads and discs were replaced.

The invoice also noted a missing stiffening plate (which Mr D says he removed), tyre wear, a faulty parking brake, and that the engine was rough. Mr D paid a total of £2,252.93 for the repairs, using his Aqua credit card, issued by NewDay.

Mr D says that, within a few miles of collecting the car, he noticed a warning light. He stopped the car and returned it to R. R identified that the oil leak was still present, even after the seals were replaced for a second time. R suggested that it would be necessary to strip the engine to identify the cause of the problem, at a cost of several thousand pounds. Mr D did not give instructions to R to do that, and the car remained at its premises.

In January 2024 Mr D arranged for an inspection to be carried out by E, an engineering consultancy. E's report included the following conclusions in respect of the oil leak:

- The replacement of the front crankshaft oil seal had not been carried out to a satisfactory standard, resulting in an excessive depletion of oil when the car was returned to Mr D.
- The engine was emitting an abnormal knock, consistent with it having been operated with low oil levels.

- The examiner was of the opinion that there were no abnormal noise levels present when the car was dropped off or when it was inspected, and that the engine was fully operational before any works were carried out.

Mr D contacted NewDay to raise a claim under section 75. When he did not receive a satisfactory response, he referred the matter to this service. One of our investigators issued an initial assessment in July 2024. He did not recommend that the complaint be upheld, largely because he thought NewDay had acted fairly in seeking the comments of R before deciding how to resolve matters. It had not received a full response and so had not been in a position to move the claim forward.

The investigator noted as well that NewDay had since indicated that it thought Mr D had a valid claim and had asked for quotes for a replacement engine. At that point, the investigator thought that NewDay had done enough.

NewDay then reviewed the subject matter of Mr D's claim. It said that the inspection report did not, in its view, indicate that the engine was not damaged before R carried out any work. It did not therefore think it should meet Mr D's claim.

The investigator reviewed the matter and issued a fresh assessment. He thought that Mr D had shown that he had a valid claim under section 75 and recommended that NewDay reimburse a proportion of the repair costs (£1,600), the cost of the inspection report (£1,500) and cover the likely costs of a replacement engine (£7,000 to £9,000).

NewDay did not accept the investigator's recommendation, so the case was passed to me for further consideration. Having considered the evidence and arguments, I issued a provisional decision, in which I said:

One effect of section 75 is that, subject to certain conditions, an individual who uses a credit card to pay for goods or services and who has a claim for breach of contract against the supplier of those goods or services has a like claim against the credit card provider. The necessary relationships between NewDay, R and Mr D are present in this case, and the transaction falls within the relevant financial parameters. I have therefore considered Mr D's dealings with R.

Under the Consumer Rights Act 2015, a contract for the provision of services is to be read as including a term that those services will be provided with reasonable care and skill. Mr D's case is, in summary, that the repairs were not carried out with reasonable care and skill and that NewDay is liable, along with R, for the losses that he has suffered as a result.

There is, I think, no real dispute that the repairs which R carried out were not successful, in that the oil leak remained after they had been completed. However, I do not believe that necessarily means that R did not act with reasonable care and skill. In order for that to be the case, I think it would be necessary to show, for example, that:

- *the problem was not diagnosed correctly;*
- *the wrong parts were used;*
- *they were not fitted properly; or*
- *additional damage was caused in the course of or as a result of the work.*

In deciding whether any of those (or some other example of unsatisfactory work) applies here, I am of course heavily reliant of the conclusions in E's inspection report. That does not mean however that I must accept its findings in an uncritical manner.

My interpretation of the conclusions in that report is that R damaged the engine when replacing the seals, or that the repair was carried out in such a way that led to further damage. The engineer does not however suggest the seals were not correctly fitted – which would have been apparent at the point of inspection. And even R acknowledges that the repair was not successful. Of itself, however, that does not mean that the work was not carried out with reasonable care and skill.

The inspection report appears to rely quite heavily on a finding that there was no engine noise when the car was left with R. It is not at all clear however how the engineer has reached that conclusion. Two previous inspections of the car had identified an oil leak, and Mr D had driven the car for around eight months after the first of those diagnoses.

Perhaps more significantly, the inspection report included:

“The examiner is of the opinion that clearly no abnormal engine noise levels were present when the vehicle was dropped off to [R], or when they inspected and carried out the repairs works, confirming the engine was fully operational and serviceable prior any works being undertaken by [R].”

But R’s invoice included the note “Engine runs rough”. That was noted in E’s report, but is clearly not consistent with E’s later statement that there was no abnormal engine noise. There is no explanation in the report for the apparent contradiction.

I note as well that, by the time the repairs were carried out, the car’s recorded mileage had increased to 141,000 miles. That is, Mr D had covered the equivalent of around 17,500 miles a year since he bought the car – which was already ten years old and had quite a high mileage. Much of that use was at a time when there was a known (albeit diagnosed as minor) oil leak. There was therefore a real possibility that the engine had already suffered damage before the repairs were carried out. Again, the inspection report does not address that possibility or explain why (if that is the case) the inspector has ruled it out.

In the circumstances, I can understand why NewDay did not consider that Mr D had shown that he had a valid claim under section 75. And I can understand too why it concluded that it should not meet that claim.

It is not for me to say whether Mr D does in fact have a claim against R. Nor is it for me to decide whether he has a claim against NewDay under section 75. What I must do is decide what I consider to be a fair resolution of Mr D’s complaint about NewDay’s treatment of his claim. In the circumstances, however, I think it was reasonable of NewDay to decline Mr D’s claim under section 75.

Mr D did not accept my provisional conclusions and asked that I reconsider my position. He noted that the independent report had concluded that the repair was not carried out to a satisfactory standard, even after two repair attempts. He also pointed out that the same report had said that the car had been well maintained.

Mr D also said that NewDay had advised him to obtain an independent report, which had cost him £1,500. It was, he said, inconsistent now for NewDay to dismiss that evidence. He also stressed the effect this had had on his finances and his ability to work and fulfil other obligations. As the car has not been used for many months, it is likely that further repairs may now be needed; and he has not been able to address a recent manufacturer’s recall notice.

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.

Having done so, however, I have reached the same conclusions as those set out in my provisional decision.

As I indicated in my provisional decision, one of the key issues I must consider is the condition of the car after R had tried to repair it in comparison with its condition before the repairs. And is not enough to show that the repairs were not successful.

E's inspection report concluded that there was no abnormal engine noise before the car was left with R. But the inspector had no first-hand knowledge of the car's condition before R tried to repair it. He was reliant on what Mr D had told him and on what R had recorded. And R's notes recorded that there was engine noise.

In noting the use which Mr D had had of the car in the time since he bought it, as well as its overall mileage, I was not suggesting in any way that he had not maintained it properly. I accept the findings of the inspection report on that point. But it is a fact that the car had a high mileage by the time the repairs were carried out. There were therefore a number of possible reasons why the repair was not successful; and I do not consider that the inspection report properly explains the conclusion that R was the likely cause of any damage – rather than, say, anything that had happened before Mr D bought it.

That is not to say that I believe any damage was already present – although there was an oil leak. Rather, I do not believe that the inspection report sufficiently backs up its conclusions.

I stress that it is not for me to decide whether Mr D has a claim against R, or indeed whether he has a claim against NewDay under section 75. Rather, I must decide what I consider to be a fair resolution of his complaint about NewDay's decision not to meet his claim. In the circumstances, I believe that NewDay's response was reasonable.

My final decision

For these reasons my final decision is that I do not uphold Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 16 June 2025.

Mike Ingram

Ombudsman