

## The complaint

Ms W complains about the outcome of a claim she made under section 75 of the Consumer Credit Act 1974 to NewDay Ltd trading as Debenhams Mastercard (“NewDay”).

## What happened

In February 2020, Ms W entered a contract with a company I’ll call ‘C’ for spray foam insulation to be installed in her loft space and applied to the breeze block gables. Ms W paid for this in part using her NewDay credit card.

Ms W put in a claim to NewDay under section 75 of the Consumer Credit Act 1974 (“s75”) in which she said the following:

- She wasn’t made aware the product contained dangerous chemicals.
- C didn’t undertake a “U” value or condensation risk analysis to check her home was suitable for the product.
- C breached relevant consumer cancellation regulations by installing the product within three days of her signing the contract with them, which meant she didn’t have time to think about whether she still wanted to go ahead with the installation.
- C falsely said her energy bills would be significantly reduced, and that her property value would increase.
- C didn’t tell her she would have problems releasing equity from her property as a result of having spray foam installed.
- C didn’t install the product correctly as they applied it between the rafters rather than at ceiling level.
- C said her existing insulation was ‘the new asbestos’ and needed to be removed.
- C installed the spray foam against a non-breathable membrane which was against industry guidance and increased the likelihood of moisture and damp being retained in the loft.
- C’s surveyor recorded high damp levels which meant the spray foam shouldn’t have been installed.

Ms W said NewDay should refund her the amount she paid to C, and the cost she incurred to remove the spray foam.

NewDay didn’t think Ms W’s s75 claim should succeed. They said they had been unable to establish there had been a breach of contract or a misrepresentation that would give rise to a successful claim. NewDay did though say they had taken too long to review the claim and offered Ms W £100 for this.

Ms W didn’t agree and referred her complaint to our service. Our investigator recommended it should be upheld. In summary, he felt there was sufficient evidence that C had misrepresented the benefits of spray foam installation to Ms W which resulted in her choosing to enter the contract with them. He recommended that NewDay refund the full amount of the installation and the cost of its removal to Ms W, with interest. And he recommended that NewDay pay the £100 they’d offered in delaying their consideration of the s75 claim.

Ms W agreed with our investigator's view which included how NewDay needed to put things right for her. NewDay didn't agree with our investigator. They said Ms W had the spray foam removed before an independent report on the installation could be completed. NewDay also said there was insufficient evidence of a breach of contract or a misrepresentation.

As the matter remains unresolved, Ms W's complaint has been passed to me for a 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'm aware that I've summarised the events of Ms W's complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I want to assure Ms W and NewDay that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – that is, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

When considering what's fair and reasonable, I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and what I consider to have been good industry practice at the time.

I think relevant law in this case includes s75. This affords consumers (debtors) a right of recourse against lenders (creditors) that provide the finance, in part or in whole, for the acquisition of goods and/or services from third-party merchants (suppliers), in the event there is an actionable misrepresentation and/or breach of contract by the supplier.

In short, a claim against NewDay under s75 essentially mirrors the claim Ms W could make against the supplier (in this case, C).

Certain conditions must be met if the protection afforded to consumers is engaged, including for instance the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. I'm satisfied the relevant conditions have been met here.

Ms W's complaint is in several parts, in that she considers C misrepresented the spray foam to her and breached the contract and her consumer rights in various ways.

Having considered the evidence, I'm satisfied it's likely C misrepresented the benefits of spray foam insulation to Ms W, and this was the reason she entered the contract with them. I'm also satisfied it's likely Ms W wouldn't have entered the contract with C but for those representations. I'll explain why.

Often, allegations of misrepresentation can founder because they essentially boil down to a lack of persuasive evidence that certain representations were made which were false. Here, however, Ms W made hand-written notes from the discussion she had with C's salesman, which are dated from the time they were made. These notes, which our investigator has shared with NewDay, include the following comments:

- *"Fibre glass is the new asbestos. And is now the equivalent of black & white TV".*
- *"New options are also safer as well as more efficient".*
- *"Cuts bills by 1/3".*

- *“Fibre glass only 35% efficient”.*
- *“Moisture levels should be between 10 – 12%”.*
- *“Will do gables as well 85% eff”.*
- *“No condensation. Reduces bills 30%”.*
- *“Top loft is 20.5% moisture and 18.2%. Timbers were 17% and 20.3%”.*
- *“VAT is only 5%. Subsidy will pay that VAT.”*

I have no reason to doubt that the notes Ms W made are a true and accurate reflection of the discussions she had with C’s salesman, and the comments that the salesman made to her about the spray foam. The first comment that *‘fibre glass is the new asbestos’* is particularly concerning in my opinion. Ms W already had existing fibre glass insulation in place and essentially the salesman made unqualified comments about this to the extent that he said it was unsafe and likely hazardous. I can see no basis on how this could be correct, or how the salesman could possibly know what he was saying was correct, and I think it was said to ‘hard-sell’ the spray foam insulation to Ms W, to the extent that she felt she had no real option other than to accept it. I also think that a statement saying that spray foam ‘cuts bills by 1/3’ is based on conjecture rather than fact.

As a result, I’m satisfied on balance that Ms W was persuaded to enter the contact with C and have spray foam installed as a result of these representations, which in my view were misrepresentations. And I’m satisfied that, had these representations not been made, she likely wouldn’t have entered the contract. I say this because Ms W already had insulation in place and I see no reason why she would have changed this, at cost, had it not been for what C’s salesman said to her. It’s on this basis that I consider that Ms W’s complaint should be upheld. It follows therefore that I don’t think NewDay dealt fairly with her s75 claim. I don’t need to consider the other parts of Ms W’s complaint, such as those around breach of contract, as this doesn’t alter the outcome of the complaint or what I think NewDay should do to put things right.

I note that Ms W had the spray foam removed. If the spray foam was still in place at the present time, then I would have directed NewDay to ensure this is removed, as the remedy for misrepresentation is to put Ms W back in the position she would have been before entering the contract. So, I think it not only fair that they refund her the cost of the installation, but also the cost of the removal of the spray foam.

### **Putting things right**

NewDay should:

- refund Ms W the cost of the installation of the spray foam - £5,900.
- refund Ms W the cost of the removal of the spray foam - £5,545.
- add 8% interest simple each year on the above from the date Ms W made these payments to the date of settlement.
- pay Ms W compensation of £100 which they offered for its delays in considering her s75 claim (if this hasn’t already been paid).

If NewDay considers it should deduct tax from the interest award, it should provide Ms W a certification of tax deduction.

### **My final decision**

I uphold this complaint and direct NewDay Ltd trading as Debenhams Mastercard to take the action I’ve set out in the ‘putting things right’ section of my decision.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms W to accept or

reject my decision before 12 December 2025.

Daniel Picken  
**Ombudsman**