

The complaint

Mr H complains about NewDay Ltd's handling of his Section 75 claim.

What happened

The background to this complaint is well known to both parties, so I won't repeat it here at length. In summary, in November and December 2023, Mr H arranged and paid for repair works to be carried out to his vehicle with a company I'll call "V". Mr H paid for this with his NewDay credit card.

Once the work had been completed and the vehicle had been returned to Mr H, he says he became aware of a number of issues. Mr H says these were a result of the repairs works carried out by V.

Mr H says he tried to resolve the matter with V, but it initially didn't accept it had done anything wrong and then said it would review the repairs if Mr H returned the vehicle to its garage and arranged for a specialist to attend.

Having lost confidence in V and unhappy to take his vehicle back to the garage, Mr H made a claim under Section 75 of the Consumer Credit Act 1974 ("Section 75"), to NewDay and provided an independent report confirming problems with the repairs to the vehicle that were carried out by V.

NewDay considered Mr H's claim, but didn't agree it was liable under Section 75, as it said Mr H hadn't given V an opportunity to try and rectify its work in the first instance.

NewDay didn't change its answer when Mr H complained, so he referred his complaint to the Financial Ombudsman. During this time, Mr H arranged and paid for the repairs to be carried out by another garage.

One of our Investigator's looked into what happened and thought there had been a breach of contract, so NewDay was liable to provide a remedy under Section 75. He recommended it reimburse Mr H the cost of the rectification works, replacement parts and cost of the independent report, alongside 8% interest to acknowledge the time Mr H had been without the funds. Our Investigator also recommended NewDay pay Mr H £100 for any inconvenience caused.

NewDay disagreed with our Investigator's recommendations. It said V was entitled to an opportunity to carry out repairs in the first instance. Therefore, as Mr H hadn't allowed this, it didn't agree it was liable under Section 75.

As the matter wasn't resolved, the complaint 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.

I've given consideration to the relevant rules and regulations applicable to this complaint and while I may not comment on everything (only what I consider is key) this is not meant as a discourtesy to either party, rather reflects the informal nature of our service.

Mr H paid for the repairs carried out by V on his NewDay credit card. This is a regulated consumer credit agreement, and our service is able to consider complaints relating to these sorts of agreements.

I must take into account the relevant law. So, in this case, Section 75 makes NewDay responsible for a breach of contract or misrepresentation by the supplier under certain conditions. I think the necessary relationships between the parties exists and the claim is within the relevant financial limits.

The Consumer Rights Act 2015 (CRA) is also relevant to this complaint. The CRA implies terms into Mr H's contract with V, that the trader must perform the service with reasonable care and skill. And that services should be performed within a reasonable amount of time.

The CRA also sets out what remedies are available to Mr H if statutory rights under a goods or services contract are not met, such as a right to repair, price reduction or seeking damages.

From the evidence available, my understanding is that both Mr H and NewDay accept something went wrong in the works carried out by V, with the most persuasive evidence being an independent report Mr H commissioned in July 2024.

The report sets out that the works completed by V, hadn't been carried out with reasonable care and skill and that further works would be needed, to put things right. So, I think, based on this, it's reasonable to conclude that a breach of Mr H's contract with V occurred.

Having reviewed the report, NewDay then declined Mr H's claim under Section 75, on the basis V had made a reasonable offer to inspect the vehicle again, implying that it would carry out rectification works if necessary. NewDay says this is the first remedy Mr H is entitled to under the CRA. As V had made an offer to inspect and carry out rectification works if required and Mr H hadn't accepted this, NewDay didn't agree it was liable to do anything further.

I've therefore considered whether NewDay was reasonable in reaching this conclusion when reviewing Mr H's claim. In the circumstances, I don't think it was, I'll explain why.

It's correct that the CRA sets out the first remedy, if there's been a breach of contract in a contract such as Mr H's, is that the trader (V) be allowed an attempt of repeat performance. The CRA however goes on to say that in providing repeat performance, the trader: *"must provide it within a reasonable time and without significant inconvenience to the consumer"*

Mr H says V initially declined to accept anything had gone wrong and later requested Mr H return the vehicle for further inspection. While V's response to NewDay was that it had asked Mr H to return the vehicle, I can't see that it provided further comments having been supplied a copy of the independent report or what steps it would take to rectify the issues that had been set out.

Added to this, there's a significant distance between where Mr H lives and where V is located. While V said it would inspect the vehicle after Mr H raised concerns, this required that Mr H return the vehicle to V. V also required in the first instance that Mr H arrange for a

specialist to attend the inspection, which would have likely been a further cost to Mr H, also being inconvenient.

Mr H declined to do so, as he had concerns about the competency of V and that it was a significant distance for him to travel. In the circumstances, I think it's reasonable to conclude that for Mr H to allow V an opportunity for repeat performance, in the manner V required, would have been of significant inconvenience.

It's likely Mr H would have needed to initially return the vehicle to V for an inspection to establish any errors, and the scope of rectification works. Following this (as detailed in the later commissioned independent report) further work was required, meaning again Mr H is likely to have been asked to return the vehicle to V. Mr H is also likely to have needed to leave the vehicle with V for a period of time, so would have also been required to arrange separate travel home. This is likely to have meant Mr H setting aside days of his time to travel a significant distance, which I think a reasonable person would conclude would be significantly inconvenient, considering time and cost.

I've noted NewDay's comments that Mr H was willing to take his vehicle to V in the first instance for the works to be carried out, aware that it was some distance from his home. While I agree that's the case, Mr H had anticipated making the journey for V to carry out the repairs, but only anticipated needing to do this once, rather than needing to make multiple trips if things went wrong.

So, on this basis, I don't agree with NewDay that V's offer to inspect the vehicle was a reasonable remedy to the breach of contract, so as to absolve it of any liability under Section 75, once it was aware of Mr H's concerns about returning the vehicle in part due to the inconvenience this would cause.

At this stage, I think NewDay should have concluded it was jointly liable for the breach of contract under Section 75 and reasonable remedy hadn't been suggested, and could have done more to assist Mr H.

Mr H has now paid for the rectification works to be carried out by another garage. So, I've then moved to consider whether it's reasonable to conclude NewDay is responsible for these costs all or in part, considering its liabilities under Section 75.

The CRA sets out that another route available to Mr H, if a breach of contract occurs, is to claim damages, which is costs he wouldn't have incurred but for the breach of contract.

Mr H has provided evidence that the rectification works cost £6,000 for labour and certain materials by a second garage.

The invoice provided by the second garage provides an overview of the works it carried out, and these all appear to relate to rectification works on the part of the vehicle that V originally carried out its works. I haven't seen anything to challenge the extent of these works, so considering the evidence available, I find it persuasive that this cost was a result of the works not carried out to a reasonable standard as agreed with V.

I note that this cost is noticeably higher than Mr H paid V to carry out the original works. The independent report however sets out that the works to rectify the repairs carried out by V, would likely exceed the original contract price. So, I find that the independent report, supports the repairs being more than the original works and that this price is reasonable in the circumstances.

Alongside this Mr H has provided evidence he had to buy a further front bumper after the one fitted by V was damaged, this including headlights came to a total cost of £1,142.11.

Similarly, these further parts Mr H ordered for the second garage to fit as part of the rectification works, had been listed as damaged in the independent report. So again, considering the evidence I've been provided, I think it's reasonable that these are costs Mr H incurred only as a result of the works carried out by V.

Mr H has also provided evidence the independent report cost £900. But for the errors made by V, I don't find he would have incurred this cost, so again I find it reasonable that NewDay reimburse this cost too.

For all of these costs, in line with how our Service awards compensation, I also find it fair that NewDay pay Mr H 8% simple interest, from the day Mr H incurred these costs, to the date of settlement. This is to recognise the time Mr H has been without these funds.

Our Investigator also recommended NewDay pay Mr H £100 compensation to acknowledge the inconvenience caused. When considering fair compensation, I must consider the error made by NewDay, which isn't the damage caused to Mr H's vehicle, rather its consideration of his Section 75 claim.

Mr H raised his claim with NewDay in May 2024 and NewDay declined it in September 2024, with Mr H then arranging for the necessary repairs to be carried out himself. The interest I've referenced above is to acknowledge the time Mr H will have been without these funds, but I do find it reasonable that NewDay also pays Mr H some compensation to acknowledge the further inconvenience caused and find £100 fair in the circumstances.

Putting things right

For the reasons explained above, I don't find NewDay's consideration of Mr H's Section 75 claim to be reasonable. Had it considered the claim further, I think it would have accepted it was liable as a breach of contract had occurred, and suitable remedy hadn't been provided.

Mr H has now carried out the rectification work to his vehicle, which was carried out as a result of the works carried out by V, paid for with his NewDay credit card. Based on the evidence I've been provided, I don't think Mr H would have incurred these further works, but for the problem in the works carried out by V. Therefore, I think Mr H can claim these costs as damages, which NewDay is jointly liable for under Section 75. To put things right, I think NewDay should compensate Mr H for the losses he incurred as a result of the poor works carried out by V. If required, NewDay can require evidence from Mr H to demonstrate he's paid these costs.

So, to put things right, I find NewDay Ltd should pay Mr H the following:

- £6,000 for rectification labour;
- £1,142.11 for replacement parts;
- £900 for independent report;
- NewDay should pay 8% simple interest on these sums from the date of payment to the date of settlement; and
- £100 compensation

My final decision

For the reasons I've explained, I uphold this complaint and direct NewDay Ltd to put things right in line with my directions set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 10 March 2026.

Christopher Convery
Ombudsman