

The complaint

Mr V complains that NewDay Ltd trading as Aqua (“NewDay”) declined a claim he brought under Section 75 of the Consumer Credit Act 1974.

What happened

In September 2024, Mr V visited a well-known online marketplace I’ll call “AB” and purchased car parts including a spoiler from a seller I’ll call ‘D’. He paid £1,600.47 for these items using his NewDay credit card.

Mr V says that when the parts were delivered, he realised the spoiler didn’t match the advert he’d seen and didn’t fit his vehicle. Mr V contacted D saying the holes in the spoiler hadn’t been drilled correctly. Mr V sent D photos, and they told him he needed to enlarge the holes to fit the spoiler correctly. Mr V said this wasn’t possible without redrilling the carbon fibre which would result in a poor product. D told Mr V they had shipped the product to several countries, had received positive feedback about the product, and that this was the first time they’d heard of this issue.

Mr V then brought a claim under Section 75 of the Consumer Credit Act 1974 (“s75”) to NewDay. NewDay said it didn’t think there was a valid debtor-creditor-supplier (“DCS”) agreement which would allow Mr V to make a claim against it under s75. NewDay said this was because his claim for breach of contract or misrepresentation was against D, not AB. And Mr V had paid AB, not D, which therefore broke the DCS link required under s75.

Mr V complained to NewDay, but their position remained unchanged. So, he referred his complaint to our service.

Our investigator felt there was a valid DCS agreement in place, and that there were sufficient grounds for Mr V’s s75 claim to succeed. She recommended that NewDay refund Mr V the £1,600.47 he paid to AB.

NewDay didn’t agree and maintained that the DCS link was broken, for the reasons it had previously given.

Mr V’s 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.

S75 gives credit card account holders certain protection when they buy goods or services using a credit card. The account holder can hold their credit card provider liable for any breach of contract or misrepresentation by the supplier of the goods or services, if certain technical criteria are met.

One of those criteria is that there has to be a valid DCS agreement in place. New Day doesn’t agree this was in place. They’ve said that S75, as currently drafted, doesn’t extend

to circumstances where goods are purchased via a marketplace platform. NewDay also said liability only arises when the creditor has a pre-existing arrangement with the supplier, in the knowledge that the credit will finance a transaction between the debtor and the supplier. And while some case law suggested that arrangements can exist by virtue of common membership of a card scheme without a direct contract, this is widely understood to apply only where the ultimate supplier forms part of that card scheme. And, in transactions involving AB, the ultimate supplier doesn't share that common membership and creates a fourth party to the transaction which breaks the DCS link.

It seems to me that what NewDay are arguing is that the payment Mr V made wasn't under arrangements it had with D. So, it doesn't think there's a valid DCS agreement in place for Mr V to make a s75 claim against it for breach of contract or misrepresentation by D.

Was the DCS agreement broken?

While Mr V's transaction with D was financed by his NewDay credit card, for section 75 to apply to that transaction there also needs to have been a DCS agreement in place. This means there needs to have been "arrangements" between NewDay and D. The arrangements do not need to have been direct between NewDay and D, as there is case law supporting the position that such arrangements can be indirect, and the way in which suppliers are paid will evolve over time as a consequence of how the card schemes have developed and operate.

In order to buy or sell items on AB's marketplace, it's necessary to set up an account with it and agree to terms and conditions relating to various matters including how business is to be transacted between buyers and sellers, the limits of AB's liability if things go wrong, payment arrangements, and so on.

AB's rules regarding payments are governed by a "Transaction Services Agreement". These outline how AB, or an associated company or "registered third party service provider", acts as a payment intermediary for transactions between buyers and sellers. Payment is received by the intermediary and then passed on to the seller. So, when Mr V used his NewDay credit card to pay for the car parts, his payment went to AB (or an associate/third party service provider) and those funds were then transferred to D,

AB is a large, well-known online marketplace on which buyers are able to pay for goods or services using various payment methods, from suppliers AB has recruited to its platform. Paying suppliers via online marketplaces is a method of payment which has evolved over the years and become a widespread commercial practice which is clearly accommodated by the card schemes. It is known to all participants within the schemes that, when a card payment is made via an online marketplace, the ultimate recipient will be a supplier which has been recruited to that marketplace and, indirectly, to the card scheme itself.

Online marketplaces are a specifically recognised type of participant under the rules of the Visa card scheme. Mr V's credit card belonged to the Mastercard scheme, and based on my reading of its scheme rules, Mastercard does not appear to recognise online marketplaces as a unique, named type of participant in its scheme. However, I think it is apparent that their participation is accommodated and indeed encouraged by Mastercard based on the promotional material it has directed at them – as below.

<https://developer.mastercard.com/solutions/online-marketplaces/>

Given the size of AB, the amount of Mastercard transactions it generates must be very large and so I also think the scheme must have decided that paying suppliers in this way is acceptable. This is supported by the fact it allows AB to bear the Mastercard logo/mark to

advertise the acceptance of its cards on the platform. I would also note that, as the Court of Appeal found in the case of *Office of Fair Trading v Lloyds & others* [2006], card issuers such as NewDay and suppliers on platforms such as AB, each benefit from the involvement of the other in a transaction. The suppliers are able to benefit from the credit extended by NewDay in the form of payment for the goods or services they have agreed to sell, while the card issuers are able to benefit from any interest, fees or charges payable on the transaction.

I think it is likely that NewDay has always understood that the Mastercard scheme would be operated in accordance with evolving rules and commercial practices, and that this evolution was likely to bring in new groups of scheme participants. I think NewDay would also have appreciated that its credit card holders would, irrespective of when they entered their credit agreements, have the ability to use their credit cards to pay the same suppliers – suppliers who were accommodated under the Mastercard scheme. So, I think NewDay would have contemplated, when agreeing to give Mr V his credit card, that the card would be used to finance purchases from whatever suppliers the scheme's changing rules and practices accommodated at the time of any given purchase. I think that included D at the time Mr V made his purchase from them.

In light of my conclusions above, I think there were the necessary arrangements in place between NewDay and D for there to be a DCS agreement between Mr V, NewDay and D for the relevant purchase. This means NewDay would need to honour a s75 claim brought by Mr V in respect of those purchases, so long as he meets the other conditions for making a valid claim. The price of the goods Mr V purchased fall within the range of values allowed under s75, so the purchase meet that criterion too.

Was there a breach of contract or misrepresentation?

A person dealing as a consumer when purchasing goods, such as Mr V did here, enjoys the protections of the Consumer Rights Act 2015 ("CRA"). One of the relevant effects of the CRA is that it became an implied term of the contract that D needed to supply Mr V with goods which were of "satisfactory quality" and fit for the purpose for which such goods were normally supplied.

When the car parts were delivered to Mr V, he noticed there weren't adequate fixing points on the spoiler to be able to attach this to his vehicle. He contacted D who told him that he would need to create additional holes. I think though that Mr V was entitled to expect, when he ordered the spoiler, that it would fit as intended without needing to make any significant adjustments to it, and which might also lead to it being damaged.

I note that D has said that they'd never received a complaint about the spoiler not fitting the cars. However, I've not seen evidence that the product wasn't suitable for Mr V's make and model of car and it would make little sense for Mr V to claim that it didn't fit, when it in fact did. D also hasn't disputed that Mr V's car wasn't suitable for the spoiler, and I've not seen sufficient evidence that Mr V was unable to fit the spoiler because he wasn't taking the necessary action to do so. As I've already mentioned, D's response was that Mr V should drill additional holes to make it fit, not that Mr V was somehow doing something wrong.

Based on the evidence I am satisfied that Mr V had a valid claim for breach of contract against D, as I don't think D did enough to show that the spoiler was of satisfactory quality and/or fit for the purpose for which it was normally supplied. And so, I think Mr V's s75 claim would likely have succeeded had NewDay considered the merits of the claim.

Summary

After considering all the evidence and arguments, I don't think NewDay were right to say the DCS agreement was broken. And I'm satisfied that Mr V had a valid claim under s75 for breach of contract.

Putting things right

I've considered that Mr V bought several other car parts from D, as well as the spoiler, and there's no suggestion that those other parts were defective. Ordinarily this might mean that the appropriate way to put things right would be for NewDay to reimburse Mr V the amount of the order relating to the spoiler alone.

However, Mr V has explained that he bought the car parts as a coordinated set intended to provide a complete, compatible look for his car. He's said that the failure of the main item (the spoiler) frustrates the purpose of the entire purchase and that he wouldn't have purchased the other parts separately without the spoiler.

I think Mr V makes a fair point here. So, I think the most appropriate way to remedy this complaint is for NewDay to reimburse the full amount Mr V paid.

My final decision

I uphold this complaint and direct NewDay Ltd trading as Aqua to do the following:

- Rework Mr V's credit card account as if £1,600.47 had been refunded from the point NewDay declined the claim on 9 July 2025. If reworking the account results in a credit balance, NewDay should also add 8% simple annual interest from the date the credit balance would have arisen, to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 6 March 2026.

Daniel Picken
Ombudsman