

The complaint

Ms A complains about how NewDay Ltd dealt with her claim for a refund in relation to a kitchen she'd paid for in part on her credit card.

What happened

The background to this complaint is well known to all parties, so I won't repeat it at length here. As a summary, Ms A ordered a kitchen in December 2022 from a supplier I'll call "K", paying via her NewDay credit card. This transaction and contract included the supply and installation of the new kitchen.

Ms A was unhappy with the fit, installation and quality of the kitchen. Having been unable to resolve matters with K and the installer, Ms A contacted NewDay for help.

Ms A commissioned an independent expert report in October 2023, which detailed extensive problems with the installation of the kitchen and that this may have caused damage to the goods, such as the kitchen units and worksurface which were purchased as part of the contract.

Ms A raised a claim under Section 75 of the Consumer Credit Act 1974 ("Section 75") to NewDay, on the basis that the problems with the kitchen, were a breach of her contract with K. As Ms A had paid via her NewDay credit card, she said it was jointly liable for this. Ms A set out that she considered a fair remedy to be the removal of the kitchen and for NewDay to pay for another supplier to provide and install a new kitchen.

NewDay didn't agree it was liable to provide a remedy under Section 75. It said K had made reasonable offers to try and put things right, and Ms A had declined these.

Unhappy with NewDay's response, Ms A referred her complaint to our Service. I previously set out my provisional findings, which I've included below:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I want to assure Ms A 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.

Ms A paid for the kitchen via her 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 (K) under certain conditions. I think the necessary relationships between the parties exist and the claim is

within the relevant financial limits. It's important to note this is a goods and services contract, as it encompassed the supply of the kitchen and its installation.

The Consumer Rights Act 2015 (CRA) is also relevant to this complaint. The CRA implies terms into Ms A's contract with K, that the traders must perform the service with reasonable care and skill. And that services should be performed within a reasonable amount of time. The CRA further implies terms into the contract that goods supplied will be of satisfactory quality. The CRA also sets out what remedies are available to consumers if statutory rights under a goods or services contract are not met.

In this complaint I'm not considering a complaint against K, rather I'm considering a complaint against NewDay. So, I have to consider NewDay's obligations as the provider of financial services – in this case its liability for breach of contract or misrepresentation under Section 75.

In doing so, I think it's also important to note that compensation for distress and inconvenience caused by the K is limited with this type of complaint. I appreciate Ms A is very upset about what's happened and she's been inconvenienced due to the problems with the installation. But I have to consider what NewDay can be held liable for – which is the 'like claim' Ms A would have in court against the supplier for breach of contract or misrepresentation.

Courts do consider what's known as general damages. But damages aren't generally recoverable for distress or inconvenience. Awards in building cases where there's been a breach of contract which caused the claimant physical distress or discomfort can be made, but they tend to be modest. While I appreciate Ms A is unhappy she's been living with an incomplete kitchen, and I don't want to diminish her experience, I don't think the nature of the issues have caused significant physical inconvenience or discomfort as would be considered by the courts. I therefore don't have the grounds to direct NewDay to pay significant compensation for this.

Ms A has provided an independent expert report and based on this, I think there's enough to demonstrate the kitchen wasn't fitted with reasonable skill and care and that this has consequently damaged parts of the kitchen paid for in the contract.

With this in mind in deciding what is fair and reasonable outcome is, I've considered the terms of Ms A's contract with K and those implied by the CRA. In doing so, I must consider the implied terms for a goods and services contract, as is appropriate for Ms A's agreement with K.

All parties accept that something has gone wrong with the provision of Ms A's kitchen. The most persuasive evidence to the cause of the problem is the independent report issued on 28 February 2024, which outlines this is likely due to the installation the kitchen. The CRA sets out what remedies are available to a consumer if the installation isn't completed with reasonable skill and care in a goods and services contract.

Of relevance here is section 15 of the CRA (Installation as part of conformity of the goods with the contract), which says:

- (1) Goods do not conform to a contract to supply goods if—
 - (a) installation of the goods forms part of the contract,*
 - (b) the goods are installed by the trader or under the trader's responsibility,*
 - and*
 - (c) the goods are installed incorrectly.**

The CRA then goes on to say, under section 19 Consumer's rights to enforce terms about goods:

(4) If the goods do not conform to the contract under section 15 or because of a breach of requirements that are stated in the contract, the consumer's rights (and the provisions about them and when they are available) are—

(a) the right to repair or replacement (section 23); and

(b) the right to a price reduction or the final right to reject (sections 20 and 24).

NewDay declined Ms A's Section 75 claim as it said K had made an offer to carry out repairs to rectify the problems. So NewDay considered K had made a fair offer in line with the CRA as this is the remedy it's first entitled to, before considering a price reduction or the consumers right to reject.

However, Section 23 of the CRA goes on to set out the following:

(2) If the consumer requires the trader to repair or replace the goods, the trader must—

(a) do so within a reasonable time and without significant inconvenience to the consumer, and

(b) bear any necessary costs incurred in doing so (including in particular the cost of any labour, materials or postage).

Ms A first raised concerns about the installation of her kitchen in May 2023. My understanding is a visit by K, or its representatives was scheduled for July 2023, but Ms A says no one attended this visit. From the evidence available I can see there was then correspondence between Ms A and K to arrange a site visit to draw up a scope of works for the repairs to take place in October and November 2023.

I haven't been provided evidence to show what happened between May and October 2023, although I'm satisfied Ms A had made K aware that there were problems with the kitchen. Following this no site visit was ultimately agreed as Ms B said she wasn't happy to go ahead, in part due to the amount of time that had passed.

On this basis, I'm not persuaded K looked to carry out the repairs in a reasonable time, as it appears there was a gap of five months where no action was taken. Added to this, I haven't seen anything to say how long any repairs may have taken, or that it wouldn't have caused significant inconvenience to Ms A.

I say this as it isn't clear whether it was simply a case of righting the wrong of the original installation or if it would require units to be removed or replaced due to the damage caused during the original installation. The independent report didn't draw a definitive conclusion on this; rather set out it wouldn't be possible to say until rectification works were carried out.

As a result, I think the opportunity for K to carry out repairs as set out in the CRA had passed, so Ms A isn't required to allow K to attempt to repair in the first instance. Therefore, I've turned to the further remedies available to Ms A, and find Section 24 applicable, which sets out the following:

(5) A consumer who has the right to a price reduction and the final right to reject may only exercise one (not both), and may only do so in one of these situations—

...(c) the consumer has required the trader to repair or replace the goods, but the trader is in breach of the requirement of section 23(2)(a) to do so within a reasonable time and without significant inconvenience to the consumer.

I'm therefore not persuaded NewDay was fair in its consideration of Ms A's Section 75 claim. NewDay didn't agree it was liable as it considered K had made a fair offer to attempt to rectify the problems with Ms A's kitchen. However, for the reasons explained, I don't think K attempted this in a reasonable time, or that it wouldn't have caused Ms A significant inconvenience.

Our Investigator recommended NewDay provide a price reduction of 20% of Ms A's contract with K, explaining it wasn't an exact science, but he considered this fair and that this refund may allow Ms A to complete any rectification works to her kitchen.

Ms A disagreed with our Investigator's recommendation and said she wouldn't be able to have the necessary repairs carried out with the compensation of 20%. Ms A said she asked contractors to quote on carrying out the repair works, but they'd declined to do so – although I haven't been provided evidence to confirm this.

I've considered the extent of the repairs that would be required to Ms A's kitchen. The report sets out that parts of the kitchen have been damaged due to problems with the installation and would likely need replacing. Having looked at the photos supplied, I'm inclined to agree, I can see holes have been made within cabinets, where they shouldn't have been and damage has been made to a significant number of parts of the kitchen during its installation. I don't therefore think it's unreasonable to conclude, repair to these would be difficult and likely cause significant inconvenience to Ms A.

There are times when I may depart from the law, such as when considering a fair and reasonable outcome to a remedy may appear disproportionate to problem that's arisen.

I've given consideration to whether Ms A's final right to reject is disproportionate to the problems with the installation with the kitchen, and whether a price reduction is more appropriate. I haven't however found that to be the case when reviewing the problems detailed in the independent report, as explained above.

While the independent report doesn't set out exactly what repairs might be required or what the cost of this would be, it does explain in detail that further work would be needed to many parts of the kitchen. This includes issues such as the door handles being fitted incorrectly meaning it's likely all the cabinet doors would need replacing. As would other parts of the kitchen units due to the way they were installed.

Added to this, the worktop is uneven and due to how the kitchen tap was fitted this may require replacing. As a result, due to the extent of the issues, while rejecting the kitchen is likely to cause Ms A further inconvenience as she'll need to have this removed and order a new kitchen, I find it to be a reasonable decision for her to make.

Ms A has been clear in her correspondence that she wishes to reject the kitchen; have it removed and buy a new kitchen from another provider. On the basis I'm satisfied the kitchen wasn't installed with reasonable skill and care, and K didn't look to carry out repairs within a reasonable amount of time, I think this is a course of action Ms A is entitled to follow in line with the CRA and as there's been a breach of contract, NewDay is jointly liable for the provision of this remedy.

Fair remedy under Section 75

Therefore, I think NewDay is liable to refund Ms A the cost of her kitchen contract. My understanding is Ms A has now paid this amount, so it's then fair that NewDay reimburses everything she's paid. From the information available, I think Ms A set out her request to reject the kitchen within the first six months of it being supplied, which means I don't think

NewDay can make a deduction for the period Ms A has had use of the kitchen. Therefore, I think NewDay should refund the total cost of the agreement, being £6,157.58.

I've considered whether NewDay should pay 8% interest on this amount to acknowledge the time Ms A has been without the funds, but I haven't found that this would be proportionate in the circumstances. I say this as Ms A intended to spend these funds for a kitchen and has had use of a kitchen (although with numerous defects), during this period. I don't then think NewDay is required to pay interest on the cost of the agreement.

Ms A says although she purchased white goods such as the fridge freezer separately, they should be considered as part of this contract, as these were also bought from K, albeit at slightly different times. Ms A gave the example of taking advantage of promotion rates, or when items were in stock. Ms A says she should therefore be entitled to reject these items too.

While I understand Ms A's concerns, I don't agree on this point. Here NewDay is only liable for the goods and services provided under the contract that was breached, and this doesn't include the fridge freezer. I have however considered this point further below under consequential losses.

I note Ms A has also raised concerns about her hobs and extractor fan, which again were purchased under a separate contract with K. For reasons similar to those I've given for the fridge freezer, I don't consider these to be part of the contract or transaction this complaint relates to. So, I don't find these items can be considered part of the contract Ms A entered into with K, which was financed by NewDay and consequently breached.

Consequential losses

Under Section 75, Ms A can also submit a claim for consequential losses, which are costs or losses she's incurred as a result of the breach of contract. I've gone on to consider the costs Ms A has claimed for.

Ms A commissioned the independent report, and but for the problems with the kitchen I think this would have been avoided. Therefore, I think it's fair that NewDay compensates Ms A the cost of the report alongside 8% interest; to recognise the time she's been without these funds. Ms A should provide evidence of when she paid for this report, and the interest should be paid from that date until the date of settlement.

As outlined above, Ms A has also said NewDay should compensate her for the cost of other parts of the kitchen (fridge/freezer and oven), which weren't part of the contract this complaint relates to. For the reasons I've given above, I don't think they can be considered part of this contract as they were purchased separately. I have therefore gone on to think about whether these could be considered as consequential losses.

Ms A says that these goods can only be used in a kitchen designed and supplied by K, meaning she would need to replace them in any new kitchen. If that's the case, I may be persuaded that replacing these items would be as a result of the breach of contract detailed above. However, in considering the evidence currently available, I haven't seen enough to say that it isn't possible for Ms A to use any of these goods in any replacement kitchen she may order.

If Ms A were to provide further evidence I'd look to consider this, however I'd need evidence that it wasn't at all possible to include or integrate the goods purchased outside of this contract into a new kitchen, rather than this being the preferred option. To confirm, based on

the current evidence, I don't think NewDay needs to compensate Ms A the value of the goods purchased outside this contract.

I understand that Ms A has also set out NewDay should reimburse the cost of having her original kitchen removed and collected, however, these are costs she would have always incurred when looking to replace her kitchen. So, I don't then find it would be proportionate to say NewDay must reimburse these costs.

Ms A will however likely incur a cost in having the kitchen from K removed. This would have been avoided but for the problems with the installation, so I think it's reasonable that NewDay reimburses this cost. It may be that Ms A arranges for the removal of the kitchen supplied by K, by the fitters of any new kitchen she orders. If so, Ms A should provide an itemised invoice showing the cost of removing the current kitchen and NewDay should reimburse this. Alternatively, if Ms A intends to remove the kitchen separately, she should provide three quotes for removal of the kitchen to NewDay, which can then choose the supplier to proceed with and should cover this cost.

Ms A has also raised concerns that when the kitchen was being fitted, the installers damaged a light in her hallway. Ms A says that to replace this, she'd need to buy a new set and has provided evidence of this costing £100. However, I'm currently not persuaded NewDay is liable for this cost. Ms A says K accepted liability, but I can't see this point was discussed further. From the information available, as K accepted responsibility for this and appears willing to cover the cost of a replacement, I don't find that this is something NewDay should now be liable for. Rather Ms A should speak to K directly about this point.

I've given consideration to Ms A's concerns that she incurred increased costs in eating as she wasn't able to use her kitchen. It would be difficult to determine an exact increased cost of ordering takeaways against eating at home. Added to this, although there's no dispute that there are many problems with the kitchen, I think it's reasonable to say that with any kitchen installation there would be days or weeks where it's not possible to use the kitchen while it's being fitted. I'm therefore not persuaded that this cost was unavoidable or that NewDay should reimburse Ms A for this.

Compensation

There's no doubt that Ms A has been through a challenging period following the installation of her kitchen and this has impacted her and her family. When considering whether NewDay must pay compensation, I must consider its role as the financial services provider and that it isn't responsible for everything that may have gone wrong through K or its third parties. That said, for the reasons explained above, I do think NewDay could have done more when considering Ms A's Section 75 claim and had it done so, I think it would have concluded it was liable for the breach of contract.

Like our Investigator, I therefore think compensation of £250 is reasonable. As mentioned above, I haven't found that NewDay must pay compensation due to the distress or inconvenience caused by K. Rather, when considering NewDay's review of Ms A's Section 75 claim, I think it should have done more to understand what had happened and had it done this, I think the matter could have been resolved in a timelier manner. While I appreciate this may be a lower figure than Ms A feels is fair, I do consider it reasonable in the circumstances.

In conclusion, I don't think NewDay fairly considered Ms A's claim under Section 75 for the reasons I've explained above. I therefore think NewDay needs to take the steps as outlined above to resolve this complaint.

Responses to my provisional findings

NewDay asked for evidence of the independent report and kitchen removal costs, so that it had a complete understanding of the settlement value. I didn't receive any further comments from NewDay in relation to my provisional findings.

Ms A provided some comments, which I've summarised below:

- Why have the provisional findings said a right to reject would be disproportionate, what does this mean?
- NewDay withheld data to obstruct her claim.
- Clarification on kitchen removal costs would be welcome.
- Costs of removing the kitchen at a practical level are not mentioned.
- Ms A will have to pay £35 to protect the kitchen floor when the kitchen is removed, this is a consequential loss.
- Why have consequential losses for plumbing and lighting not been considered.
- Provide a breakdown of the award being made.

I appreciate Ms A asked for a further extension to provide an additional response. I want to confirm I've taken into consideration everything Ms A's told us and I'm sorry to hear of the challenges she's recently faced. That being the case, while taking Ms A's circumstances and personal information provided into account, I consider the extensions already provided to be reasonable. I've therefore proceeded with my review of the complaint – the rules under which our Service operate, allow me to do this.

As the deadline for both parties to respond to my provisional findings has now expired, the matter has been passed back to me, in order to make my final 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've reconsidered the circumstances of this complaint, alongside the evidence and comments provided by both parties. Having done so, I've reached the same conclusions as those set out in my provisional findings above, so I uphold this complaint.

In line with my findings above, I find NewDay should have done more to assist Ms A when considering her claim under Section 75 and is therefore liable to provide a remedy. As a fair resolution to this complaint, I find Ms A is entitled to reject the kitchen, so NewDay should reimburse Ms A the cost of the kitchen contract with K, being £6,157.58.

I appreciate Ms A has asked for a breakdown of this figure. I can confirm this is the total cost of the contract Ms A entered into with K, that was financed by NewDay. As Ms K has had some of the kitchen, I don't then direct NewDay to pay interest on this amount.

In relation to whether a 'right to reject' would be disproportionate, I can confirm I didn't find this to be the case. Rather I have found Ms A is entitled to reject the kitchen for the reasons explained in my findings above.

I haven't been provided evidence that other elements of the kitchen not included in the contract, such as white goods would be considered consequential losses as explained in my findings above. I therefore don't find NewDay is liable for these, based on the evidence I've been provided at the time of making my decision. Similarly, for the reasons set out above, I don't find NewDay liable for a damaged as K had previously offered to reimburse this.

Ms A incurred costs in commissioning the independent report and but for the problems with the kitchen, I don't think would have required this report. So NewDay should reimburse this cost alongside paying 8% to acknowledge the time Ms A was without these funds. NewDay has asked for evidence of this cost, so should contact Ms A directly to confirm this.

I've also found that as Ms A is entitled to reject the kitchen, she'll likely incur a cost in its removal and disposal, that'll be incurred as a result of the breach of contract. I haven't awarded a specific figure for this, as I haven't seen evidence to show how much this may cost. Rather my decision remains, that if this cost is included in the provision of any new kitchen Ms A may order, she should ensure she has an itemised breakdown showing the cost of the kitchen removal and disposal, factoring in the protection of her flooring to then provide a copy of this to NewDay.

Alternatively, Ms A should obtain three quotes for the kitchen (being the items covered under the contract in dispute) removal and disposal, to then agree the cost with NewDay which it should cover.

I've taken on board Ms A's concerns about NewDay withholding data, however, I haven't seen persuasive evidence of this. For the reasons I've explained above, I don't think NewDay was fair in its consideration of its liabilities under Section 75, however I've found that it was clear in providing this answer to Ms A and then giving referral rights to our Service, when she expressed dissatisfaction. So, I haven't found NewDay made an error on this point.

Considering fair compensation, I do find Ms A has been put through noticeable distress and inconvenience. While this isn't fully attributable to NewDay, which I've explained in more detail above, I do find NewDay contributed to the frustration and inconvenience Ms A has endured due to its handling of the Section 75 claim. I therefore find its appropriate NewDay pays compensation to acknowledge this and find £250 to be fair in the circumstances.

My final decision

For the reasons I've explained above, I uphold this complaint. To put things right, I direct NewDay Ltd to do the following:

- Reimburse Ms A the cost of the kitchen contract, being £6,157.58.
- Reimburse the cost of the independent report, alongside 8% to the date of settlement, once provided evidence of this.
- Cover the cost of the removal of the kitchen supplied by K
 - o If this is carried out by the supplier of a new kitchen, Ms A should ask for an itemised bill showing the cost of the removal and disposal of the kitchen provided under the contract financed by NewDay.
 - o Alternatively, Ms A should provide three quotes for the works to be completed, for the removal to then be agreed with NewDay.
- Pay Ms A £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 31 March 2026.

Christopher Convery
Ombudsman