

## **The complaint**

Mrs P has complained NewDay Ltd, trading as Aqua, won't refund monies she spent on share trading when she didn't get the service she was promised.

## **What happened**

In 2017 Mrs P was cold-called by a foreign-based company offering her investment options. She understood she could invest set amounts of money – from as little as €250 – which the company would invest on her behalf. I'll call the trading company G. She was led to believe she could double her investment. It was also confirmed to her that she'd be able to access the money on her account at any time.

Mrs P used both money from her current account and her Aqua credit card to invest. She made three separate payments to G of €250, €2,000 and €4,500 with her Aqua credit card from December 2017 to March 2018.

Mrs P quickly found she wasn't getting what was promised. She could never speak to her account manager, who was then changed. G's location also seemed to move from country to country. When she became aware that the Financial Conduct Authority issued a warning against any trading with G in May 2018, she realised she'd been a victim of a scam.

She complained to both NewDay about the spending on her Aqua credit card and to her bank. Her bank refunded her the money. Mrs P returned forms to NewDay in February 2019 to enable them to attempt a chargeback for goods not being provided as described. NewDay believed this would prove unsuccessful as more than 120 days had passed since Mrs P's original investments. NewDay believed they didn't have to do anything further. They expected Mrs P to settle the money owed on her credit card bill in line with the terms and conditions.

Mrs P brought her complaint to the ombudsman service. She was unhappy at how she'd been treated by NewDay.

An investigator initially felt that NewDay hadn't done anything wrong. It wasn't clear Mrs P had any right to her money back under the chargeback rules. Mrs P's complaint was re-considered before being allocated to an ombudsman. Another investigator believed NewDay hadn't considered Mrs P's ability to claim her money back under section 75 of the Consumer Credit Act 1974. As there was evidence of misrepresentation – G had been operating a scam – she asked NewDay to refund Mrs P in full, and to add 8% simple interest to all payments Mrs P had made to NewDay.

NewDay disagreed with this outcome. They believed what Mrs P had done was provide a cash deposit to a trading account rather than purchase any goods or service. They therefore didn't believe section 75 applied to her complaint.

Mrs P's complaint has been referred to an ombudsman for 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.

Having done so, I've reached a similar conclusion to our investigator and for roughly the same reasons. I'll explain why.

I'm aware that I've summarised this complaint above in far less detail than either of the two parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Mrs P has provided us with detailed submissions about what happened and why she was drawn into investing with G. I've also seen the terms and conditions for her account with G. I'm also aware of the detail contained in our investigator's view of 23 February 2021. This covers some of what happened which I'm not intending to repeat.

There are two aspects to the dispute: the chargeback and the section 75 aspects. I'll deal with the chargeback issues first.

### *Chargeback*

The chargeback rules are managed by the relevant international card schemes. They're not a guarantee of a refund. But these rules can offer customers who've bought something which turns out to be not what they expected a simple and effective way of being reimbursed. As long as they made the purchase using their debit or credit card, they can ask their card issuer to assist. There are timelines and rules governing what a card issuer can and cannot do depending on the response provided by the merchant.

In this case – although NewDay has retained no evidence on this aspect – they submitted a claim based on Mrs P's submission to them. For reasons that are unclear, G challenged this. NewDay felt any further attempt to chargeback would be unsuccessful. Card scheme rules about getting money back for investments are complex but I believe there may well have been some scope under the rules.

I appreciate NewDay firmly believe the service Mrs P was buying was depositing money onto an account – rather than the services that may flow from trading that money for shares. Therefore I appreciate why they believe any further claim would have been unsuccessful. I also agree Mrs P's transactions with her credit card were completed outside of any 120 day timescale for chargeback.

However I believe it doesn't matter whether the chargeback would have been successful or not as Mrs P always had rights under section 75.

I'll explain this below although it's clear NewDay never considered these.

### *Section 75*

Section 75 of the Consumer Credit Act 1974 allows a customer to submit a claim for breach of contract or misrepresentation by a supplier to their credit provider. This applies when customers use certain types of credit to buy goods or services. In this case Mrs P used her

Aqua credit card to make three payments to enable trading to be carried out on an account in her name with G.

It's worth clarifying I'm not deciding NewDay's liability under section 75 of the Consumer Credit Act. We consider the relevant law and that includes section 75. But we decide cases by considering what is fair and reasonable, as statute requires us to do. What I'm deciding is whether NewDay did enough in considering Mrs P's complaint. And if they didn't, what else should they now do.

If there was a misrepresentation or breach of contract in the supply of the goods then it's fair to ask NewDay to put things right.

Firstly I've considered NewDay's main argument that section 75 doesn't apply as Mrs P wasn't buying goods or services but just depositing cash onto an account. They believed that service existed so see no liability under section 75. I disagree with this interpretation.

I've reviewed what Mrs P has told us, along with G's terms and conditions. Mrs P has told us she was being told she could invest and see her money grow. I see no reason why someone would enter into an agreement which was just to deposit funds without the related service for trading to be carried out. This wouldn't have provided her with the growth in the value of funds which is obviously what Mrs P thought she was buying.

And in any case it's clear from warnings published by the FCA and knowledge about how similar companies operate, these businesses were operating a scam. There doesn't seem to be any intention to deliver actual share trading. Regardless of whether this trading proved successful or unsuccessful.

I don't believe there's any real dispute that all Mrs P's money went to G. I say this despite narrative on Mrs P's Aqua statements showing credits to different named companies. There is clear additional evidence from G showing they received her payments.

I've seen nothing to show G wasn't misrepresenting its services to Mrs P. And the terms and conditions confirm Mrs P should have been able to access her funds and this service was denied to her.

I've gone on to consider whether this misrepresentation induced Mrs P to investing in G's services. I believe so. She was assured her money could potentially double and that her money was safe as G was investing in regulated markets. This was blatantly untrue and even if Mrs P may not have expected her money to double – after all who does – I'm sure she was comforted by the fact her money was safe and available to her. There's no dispute this wasn't the case.

### **Putting things right**

As I'm satisfied there was a misrepresentation here, I will be asking NewDay to put things right.

For the euro-based transactions, Mrs P was charged the sterling equivalent on her Aqua account. She was also charged exchange fees. These are all shown as their sterling equivalents in our investigator's view of 23 February. Interestingly it doesn't appear as if NewDay treated these transactions as cash deposits. Mrs P's account statements don't show interest being paid from the date of the transaction.

I don't believe Mrs P has repaid these transactions in full. We've received correspondence from her which shows she negotiated a payment holiday with NewDay. But I do know that

NewDay refunded initial over limit fees they charged Mrs P.

NewDay will need to rework Mrs P's account as if these three transactions – and the associated fees – were never made. This may also involve corrections to Mrs P's credit record to ensure there are no late payment markers related to these transactions.

Any payments that Mrs P has made towards the three transactions will need to be refunded to her, along with 8% simple interest a year from the date of the payment.

### **My final decision**

For the reasons I've given, my final decision is to instruct NewDay Ltd to:

- Rework Mrs P's Aqua credit card account to ensure transactions for £222.38 in December 2017, £1,783.38 in January 2018 and £4,002.79 in March 2018, along with their associated fees (£6.56, £52.61 and £109.42) are removed;
- Update her credit record to ensure no negative data is lodged related to these transactions;
- Refund any payments Mrs P made towards that part of her credit card debt; and
- Add 8% simple interest a year from the date of her payments to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 14 April 2021.

Sandra Quinn  
**Ombudsman**