

The complaint

Mr P has complained that NewDay Ltd trading as Aquacard won't refund him for transactions made on his credit card to a firm that provides derivatives trading recommendations.

What happened

Mr P says he was offered a subscription to a derivatives trading recommendation service in March 2018 from a firm I'll call 'S'. He says S claimed it had a win rate of around 80% and that it gave a 90-day satisfaction guarantee. Mr P says the subscription fee was around \$2,000 USD for 18 months. Mr P says he made a mistake by clicking on an enrolment button on the website.

Mr P says S attempted to take payment but as Mr P only had a £1,000 limit, the transaction didn't go through. Mr P says he made a part payment for the subscription and that S asked him to pay the balance of the fees by other means. S took two payments on 23 March 2018, one for £426.25 and another for £106.54.

S provided options recommendations to Mr P. And Mr P says between 23 March 2018 and 6 April he placed 11 options trades and that he made losses on 10 of them. So his win rate was around 9%.

Mr P says he tried to cancel his subscription in April 2018, but S wouldn't return his money. Mr P says S misrepresented the service and committed fraud.

In June 2019 Mr P contacted NewDay to ask it to help him get a refund. In this contact he acknowledges subscribing to the service and paying the equivalent of \$750 USD to S. But he highlighted his losses and again said he'd been lied to.

NewDay looked into things but didn't uphold Mr P's complaint. It said investments and trades aren't covered under the guarantee which is outlined in the terms and conditions and within the card scheme operator's policies. It also said Mr P's dispute was raised out of time for the card scheme operator's chargeback rules.

As things couldn't be resolved, Mr P brought his complaint to our service. Ultimately, he thinks S exaggerated the success rate for their service.

One of our investigators looked into things but didn't uphold the complaint. She didn't think NewDay acted unfairly by not raising the chargeback because it had been brought out of time. And, even if it had been brought in time, she wasn't persuaded it would've had a reasonable prospect of success.

Our investigator did, however, think that NewDay should have considered a claim from Mr P under section 75 of the Consumer Credit Act 1974 (CCA). But she didn't think there was enough evidence to determine there'd been a breach of contract or misrepresentation. So she didn't uphold the complaint.

Mr P didn't agree. He thought he'd provided enough evidence of a misrepresentation. So the complaint has been passed to me to make 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 considering whether NewDay has acted fairly and reasonably in the way it handled Mr P's request for getting his money back. In situations like this, the finance provider can consider raising a chargeback or assessing a claim under section 75.

I've first thought about its decision to not raise a chargeback. The process is subject to rules made by the relevant card schemes. For the card scheme that is relevant in this case, the rules say there is a limited window of time in which to raise a chargeback. Generally, this is 120 days from the date of the transaction or, if a service was meant to be provided by a specific date in the future, 120 days from that date. As Mr P contacted NewDay well after this (over a year later), I don't find it acted unreasonably by not raising a chargeback, because I don't think it had a reasonable prospect of success.

However, given the transaction was carried out on a credit card, I agree with our investigator that NewDay ought to have considered assessing a claim under section 75. It looks like the necessary relationship exists and the value of the transactions seem to fall within the relevant monetary limits for a valid claim to be considered under section 75.

Unfortunately, I have very limited information about what happened beyond what Mr P has told us, and emails he's supplied from S. Mr P has supplied an email from S sent to him on 6 March 2018 with details about the program, which he says contains misrepresentations. This email is in relation to two subscription options – lifetime or 24-month access. I'm mindful Mr P told NewDay he entered into a different sort of arrangement. He also says S didn't send him details of the subscription he entered into. Mr P also tells us the misrepresentation from S happened on 20 March 2018, but he hasn't provided evidence to corroborate that. So the evidence of when the misrepresentation occurred is slightly conflicting.

I asked for Mr P further evidence to clarify things. I think the main thrust of what he is saying is that S misrepresented the win rate to him. And I can understand why he's unhappy if he was expecting a much higher win rate than what he achieved. I've reviewed the evidence we have been provided (even though it's not totally clear the email from March 2018 is relevant to the subscription Mr P entered into). I can see the email says the program *delivers 100 money doubling trades or you get your money back*. But the email is in relation to a 24-month service or lifetime subscription. The guarantee on the email refers to a 24-month performance guarantee. Mr P cancelled his subscription within a few weeks, so I don't see how I can say there's been a misrepresentation based on the statement above.

Moreover, I note the email does provide some performance statistics around the win rates. But I can't see that these win rates are guaranteed. It's not clear Mr P was told he'd achieve a certain win rate within the few weeks he subscribed. I've also not been provided evidence to show the performance rates were false. And when opening one of the links in the email the terms say S can't guarantee subscribers will mirror the exact performance stated on promotions. So while I can understand why Mr P was disappointed, based on the evidence he's been able to provide, I don't think there's sufficient grounds for me to say NewDay has acted unfairly by not reimbursing Mr P off the back of him being misrepresented. I have to base my decision based on the evidence submitted by the parties.

I've also thought about what Mr P said about not authorising S to take the payments after he said the initial transaction was refused because it was for a larger amount than his credit limit. But I'm mindful that when he contacted NewDay to raise his dispute back in June 2019 he said he subscribed to the service and paid the merchant. He also then appears to have used the subscription. So I don't think I can safely conclude he didn't authorise the transactions totalling \$750 USD.

Therefore, based on what I've seen, while I know it'll disappoint Mr P, I don't think I can conclude he didn't authorise the transaction. I also don't find NewDay acted unreasonably in not raising a chargeback, and I don't find there are proper grounds to say a section 75 claim should have succeeded, based on the limited evidence that's been supplied.

For completeness' sake I also note Mr P has mentioned NewDay may have unfairly reduced his credit limit when he raised a complaint. If he wants to pursue a complaint about this, he will need to allow NewDay to respond to this complaint in the first instance. And if he's unhappy with its response, it may be something our service is able to consider.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 5 July 2022.

Simon Wingfield
Ombudsman