

The complaint

Mrs M complains that NewDay Ltd trading as Aqua haven't refunded a payment she made using her credit card.

What happened

In August 2021, Mrs M says she submitted an application on behalf of her son for a modelling assessment. The studio, who I'll refer to as "T", responded to say the application had been successful and invited Mrs M and her son for a modelling photoshoot to assess his suitability for a career in modelling. Mrs M agreed to attend the shoot and paid a £50 refundable deposit.

Mrs M says that immediately following the photoshoot T said that her son had passed the assessment and he would be suitable for modelling work. She says that T told her she would need to purchase a modelling package in order for her son to begin getting paid work. She says that she told T that she didn't understand anything about the industry and therefore needed someone to manage her son's career and arrange the paid work for her. She says T agreed to do this if she signed up to a package worth £3,050.

Mrs M agreed to enter into a contract for the package on this basis. She says she was told they would be able to find her son paid work within six weeks, which would then quickly repay what she had paid for the modelling package. The contract she signed said that she had agreed to purchase: 50 photos on a disc, 20 printed images, a digital 'Z card', and an online portfolio. Mrs M paid £3,000 using her NewDay credit card to sign up to the package, the additional £50 was taken from the deposit she had already paid to secure the photoshoot.

Around four weeks later Mrs M had an email exchange with T. She said that no work had so far been sourced for her son and she said that she was assured someone would be doing this on their behalf and that is why she purchased the £3,000 package. T said that it hadn't promised to find her son any work, only that it would give them some advice as to how to find work. Mrs M asked for her money back as she felt the package had been misrepresented to her. When T didn't respond, Mrs M contacted NewDay to see if they could help her get her money back.

NewDay initiated a chargeback to try and retrieve the payment Mrs M made. However, T defended the chargeback claim. NewDay said that because it was defended showing that the goods and services Mrs M had agreed to buy had been provided there was nothing further it could do. Mrs M complained to NewDay about this outcome, but NewDay didn't uphold her complaint.

Our investigator recommended the complaint be upheld. She thought NewDay ought to have pursued the chargeback further and had it done so, it was likely the chargeback would have eventually succeeded. On this basis she recommended NewDay refund the £3,000 Mrs M paid, adding 8% simple interest.

NewDay didn't agree. In summary, it said that Mrs M signed for the contract with T which

was provided as part of T's chargeback defence. This showed the goods and services she'd agreed to purchase and therefore the chargeback couldn't proceed further as Mrs M had accepted T's terms of sale.

The complaint has been passed to me for a 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.

NewDay attempted to recover Mrs M's payment by initiating a chargeback through the relevant card scheme. This is a way in which payment settlement disputes are resolved between card issuers (e.g. NewDay) and merchants (e.g. T). In certain circumstances the scheme provides a way for NewDay to ask for a payment Mrs M made to be refunded either in full or in part. Those circumstances include (but not limited to) where the goods or services aren't supplied, as described, or are misrepresented by the merchant Mrs M paid.

A chargeback doesn't guarantee a refund. T can defend any chargeback made by NewDay, which is what happened here. T provided a copy of the signed contract which set out what Mrs M had agreed to purchase and on what terms. Where a chargeback is defended, NewDay can make a further presentment to the defence and ultimately it could have asked the card scheme to arbitrate if the chargeback continued to be defended, but it chose not to do so here. This was because it said that it couldn't pursue the chargeback further due to the nature of T's defence.

Having considered the circumstances here, I don't think NewDay have acted fairly when trying to recover Mrs M's payment. This is because I think it could and ought to have done more to robustly pursue the chargeback further.

NewDay said the contract Mrs M signed (provided by T in defence to the chargeback) showed what she had agreed to. While the contract did show what Mrs M had agreed to, it doesn't automatically follow that the package wasn't misrepresented and NewDay appears to have missed this point entirely. It seems to have simply declined to take the claim further on the basis Mrs M signed a contract, whereas the crux of her dispute was that what she'd agreed as part of that contract wasn't provided and/or was misrepresented. T's chargeback defence didn't demonstrate it had provided what was agreed.

Further, NewDay says that Mrs M didn't provide sufficient evidence to demonstrate that the modelling package had been misrepresented to her, nor did she ask them for assistance in what further evidence she could provide. But this isn't right. I can see that on the original online claim form Mrs M completed for NewDay she said she had additional evidence such as screenshots of emails, but the form didn't let her upload them. She asked for help in providing that evidence. I can't see that NewDay provided any assistance to her or that Mrs M's further evidence was included as part of the chargeback.

The emails Mrs M referred to make it clear that she complained to T about not receiving paid modelling work for her son as promised. She also asked for her money back from T, but it failed to respond to her. I think this demonstrates that Mrs M was under the impression she had been promised paid work as part of the package and it wasn't provided. Further, the initial emails she received from T prior to the photoshoot said *"we act as a first stepping stone to help people on their way in the modelling industry"* and *"we aim to help you establish the following: ... how to get paid work in the modelling industry"* and *"If you are successful on the day... and [we] believe that you could get paid modelling work, you will be invited to have a consultation"*.

I think what T was therefore offering was clearly aimed at applicants wishing to get paid modelling work. Mrs M's son was 'successful' on the day of the photoshoot and had a consultation with T. It was during this consultation that Mrs M says that in exchange for entering a contract for a package worth £3,000, T would arrange and manage paid modelling work for her son.

What Mrs M has described as being agreed has been consistent throughout. I've found what she's described to be persuasive, not least of all because the actions she took (in complaining to T and specifically what she complained about) are consistent with what she says happened during the consultation and are consistent with how the services were described by T prior to her attending the photoshoot. Further, I'm satisfied that Mrs M wouldn't have paid such a significant sum of money for what would otherwise have been simply a series of photos. I think she did so because she was led to believe that the package included guaranteed paid modelling work for her son.

What Mrs M has evidenced and described is consistent with the types of modelling scams which have been publicised online and in the media. This service has also seen examples of these types of modelling scams previously whose circumstances are similar to those described by Mrs M.

Overall, I don't think NewDay did everything it reasonably could to give Mrs M's chargeback the best chance of succeeding. It doesn't appear to have assisted her in providing suitable evidence to counter T's defence of the chargeback. Further, it seems to have simply chosen not to pursue the chargeback further because T provided a copy of a signed contract. The existence of a signed contract doesn't mean the services were provided or that there weren't other goods or services that were promised in addition to what was listed on the contract. Indeed, Mrs M's emails between her and T provide persuasive written evidence to suggest paid modelling work was also included in the package.

Given that what Mrs M had described had the hallmarks of a well known scam, and she did have in her possession evidence which suggested T had misrepresented its services to her, I think NewDay ought to have robustly pursued the chargeback further.

NewDay's actions have unfairly prevented Mrs M from potentially recovering the payment she made. Given what I've set out above about the circumstances and evidence surrounding the contract, I think had the chargeback been pursued as far as possible I think it's most likely it would have succeeded. I think NewDay therefore ought to refund the payment Mrs M made, adding 8% simple interest per year to the refund.

I've thought about whether Mrs M should only receive a partial refund for any goods/services she did receive under the contract. However, I can't see that she ever did receive any of the goods or service set out in the contract – T provided no evidence of this in its chargeback defence. But even if she did receive some or all of the photos, I don't think she's received any meaningful benefit from these. This is because the purpose of her entering into the contract was to receive paid modelling work, not to receive photos and T set out the photos were the necessary pre-cursor for receiving paid work. I therefore don't consider it necessary to make any deduction to the refund.

My final decision

For the reasons given above, I uphold this complaint and direct NewDay Ltd trading as Aqua to:

- Refund Mrs M £3,000, adding 8% simple interest per year from the date NewDay re-debited her account to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 7 October 2022.

Tero Hiltunen
Ombudsman