

The complaint

Miss B complains that NewDay Ltd didn't refund a payment she made.

What happened

In November 2021, Miss B attended a photoshoot with a company I'll call "T". Miss B had paid a £50 refundable deposit to secure her place following an application she made to be assessed for modelling work. Miss B attended the photoshoot and she says T told her that she had the potential to get paid modelling work. She says T agreed to help her with this by introducing her to modelling agencies that could source her paid work.

Miss B signed up to a package with T costing £1,500. The £50 deposit she had already paid was deducted from that price and she paid the remaining £1,450 using her NewDay credit card. The contract Miss B signed with T said that she had agreed to purchase: A digital 'Z card', an online modelling portfolio, a disc containing 30 photos and access to T's 'agency liaison' service.

Soon after the photoshoot Miss B says she realised she had likely been the victim of a scam. She said she'd seen numerous reports online about T operating a scam. She said she tried to visit T's offices to ask for a refund, but nobody would let her in. She then contacted NewDay for assistance in December 2021 to ask it to help her get her money back.

NewDay processed a chargeback through the relevant card scheme, but T defended the chargeback stating that Miss B had received all the services T had agreed to provide in the contract. NewDay asked Miss B to provide any further evidence or documentation to support her claim that T hadn't provided what it had agreed to. When Miss B didn't provide further information, the chargeback failed. NewDay also considered Miss B's claim for a refund under section 75 of the Consumer Credit Act 1974 ("section 75") but it said that it didn't think it had any liability to provide Miss B with a refund.

Our investigator didn't recommend the complaint be upheld. She thought that NewDay had acted fairly in attempting a chargeback to try and recover the payment Miss B had made. She didn't think NewDay were unreasonable in not pursuing the chargeback further based on the limited information Miss B had been able to provide in support of her claim. For the same reasons, she wasn't satisfied that NewDay had any liability to refund her under section 75 either.

Miss B didn't agree with the outcome, so 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.

Miss B made a payment to T using her NewDay credit card. I've therefore thought about whether NewDay acted fairly and reasonably in its attempts to assist Miss B with her dispute

and claim for a refund.

NewDay initially attempted to recover Miss B's payment through the chargeback process. This is operated by the relevant card scheme and is a way in which payment settlement disputes are resolved between card issuers (such as NewDay) and merchants (such as T). In certain situations, such as where goods aren't supplied or are misrepresented, the scheme provides a way for NewDay to ask for a refund of a payment Miss B made.

NewDay isn't obliged to process a chargeback, but I would consider it good practice for it to do so where the right exists and where there was a reasonable prospect of success. Miss B had indicated that she believed she'd been the victim of a scam. In these circumstances I think NewDay acted fairly by initiating a chargeback.

The chargeback was however defended by T. Where a chargeback is defended NewDay can make a further presentment to that defence and ultimately it could have also asked the card scheme to arbitrate on the matter if T continued to defend it. NewDay chose not to pursue the chargeback further following T's defence and this was because Miss B hadn't provided any further evidence of a breach of contract by T.

Having thought about what Miss B said she understood she would be getting from T when she initially raised her complaint with NewDay, this appears to be exactly what was listed on the contract she signed with T. For this reason, I can understand why NewDay wanted some further clarification and evidence about what part of the contract had allegedly been breached. As Miss B didn't provide this information, I don't think NewDay acted unreasonably in not pursuing the chargeback further.

NewDay also considered whether it had any liability to Miss B under section 75. In summary, section 75 holds NewDay jointly liable (as the provider of credit) for any breach of contract or misrepresentation by T (who Miss B paid using her NewDay credit card), provided that certain conditions are met. For completeness, I'm satisfied those conditions are met here.

NewDay didn't think it had any liability to Miss B under section 75 because it said that it could not identify any breach of contract or misrepresentation by T despite asking Miss B to provide further information or evidence about this.

Based on everything Miss B has said and provided, I'm not persuaded that the goods and services she agreed to purchase from T were misrepresented to her or that there has been a breach of contract. It seems that everything she believed she would be getting was listed on the contract she signed. Further, she's not provided any persuasive evidence to demonstrate some or all of those things were not made available to her by T.

I note Miss B says that there are numerous reports online of T operating a scam. Our service is aware of modelling scams which have been publicised online and in the media. This service has also seen examples of those types of modelling scams previously. However, I'm not persuaded that the circumstances Miss B describes and the evidence and information she's been able to provide in this particular case, mean that NewDay acted unfairly in the way it handled her request for assistance in seeking a refund of what she paid.

While it's possible Miss B was a victim of a scam, in the specific circumstances of this case, I don't think NewDay acted unreasonably in not pursuing the chargeback further than it did, nor do I think it was unreasonable for it to decline her claim under section 75.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 16 December 2022.

Tero Hiltunen
Ombudsman