

The complaint

Ms S complains that NewDay Ltd (trading as Aqua) declined her request for a refund under section 75 of the Consumer Credit Act 1974.

What happened

In May 2021 Ms S used her Aqua credit card to pay £200 to colour treat her human hair extensions. Ms S had an initial hair consultation, she provided a sample of the colour she wanted to achieve and says she was told the extensions were suitable for colouring and the blonde colour she wanted, could be achieved. However, Ms S says that when she attended her salon appointment, she didn't get the colour she'd wanted, and the extensions were left dry and damaged. Ms S was also unhappy with the standard of service provided at the salon.

Ms S says she raised her concerns with the stylist at the time, but they didn't offer a solution. In October 2021 Ms S made a formal complaint to the salon's head office. In response it said Ms S was happy when she left the salon and she didn't raise a complaint within 14 days to allow it the opportunity to put things right, in line with its complaints policy. As Ms S raised her complaint five months after the service, it said it couldn't confirm what had been done to the extensions since the appointment, so it refused to re-colour or offer a refund.

Ms S asked Aqua to assist her with getting a refund in November 2021. Aqua didn't attempt a chargeback because it was already outside the 120-day time limit. It considered Ms S' dispute under section 75. Aqua didn't think Ms S had provided enough evidence to demonstrate there had been a misrepresentation or a breach of contract by the salon, so it declined her claim. Ms S complained, she didn't think Aqua had considered all the evidence she provided. Aqua maintained it was right to decline her section 75 claim.

Unhappy with Aqua's response, Ms S asked our service to look into her complaint. Our investigator didn't think there was enough evidence to confirm what hair colour had been agreed, so she didn't think there was sufficient evidence to confirm a breach of contract or misrepresentation by the salon. In addition, the investigator didn't think there was any supporting evidence to show Ms S raised concerns within the required 14 days. The investigator didn't think she could be certain the extensions hadn't been treated in the interim, given it took Ms S over five months to formally complain to the salon.

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 read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to take it on board, but because I don't think I need to comment on it in order to reach the right outcome. And our rules allow me to do this. This reflects the nature of our service as a free and informal alternative to the courts.

Generally, where a consumer raises a dispute about a payment made, in part or whole, with a credit card, as is the case here the card provider can consider the dispute under two guises- chargeback and a section 75 claim.

Chargeback

The chargeback process enables customers to ask their card issuer to refund payments on their card when there is a problem concerning a specific transaction. Individual card issuers have their own rules around how the scheme works – these are not set by the customers' bank. The card issuer for Ms S' transaction was Mastercard. Its rules state that a chargeback request needs to be raised within 120 days from the date of the transaction. Ms S contacted Aqua on 17 November 2021, which was already 174 days since the transaction date, so I don't think Aqua made a mistake when it didn't raise a chargeback on Ms S' behalf.

Section 75

In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of the goods or services and the provider of credit if there's been a breach of contract or misrepresentation by the supplier. To be able to uphold Ms S' complaint about Aqua under section 75, I must be satisfied that there has been a breach of contract or misrepresentation by the salon.

It's worth clarifying I'm not deciding Aqua's liability under section 75. We certainly take into account the relevant law, which includes section 75. But we decide cases by considering what is fair and reasonable, in the circumstances. So, what I'll be deciding here, is whether I think Aqua handled Ms S' claim fairly or not.

A misrepresentation is a false statement of fact which induces the consumer to enter an agreement and the consumer suffers loss because of the misrepresentation. Ms S says the hair colouring service was misrepresented to her because the stylist told her during her consultation that the extensions were suitable for colouring and said the colour she wanted would "*definitely*" be achieved. Ms S says she would not have agreed to pay for the treatment, if she had been told she couldn't get the desired results.

Ms S has provided images showing the colour of her hair extensions in comparison to the sample colour she wanted. The sample colour is light blonde in appearance, whilst the extensions appear to be a darker blonde/light brown colour. I've looked at Ms S' invoice it details she received "Balayage" and "Toner" service, but it doesn't make any reference to what colour the extensions were to be dyed to. I haven't seen any supporting evidence to confirm the agreed colour, nor have I seen anything to confirm Ms S was guaranteed her desired colour would be achieved.

Although Ms S says she complained on the day of her appointment. The salon manager said, "*you were satisfied with the results on your colour, back in May 2021 and there was no indication of you being dissatisfied*". The earliest evidence of Ms S complaining is five months after her appointment. I would have expected her to escalate a complaint much sooner, if she didn't receive the colour she had been promised and the blonde colour was a key reason she entered the contract. In addition, due to the lapse of time between Ms S' appointment and her complaint, I can't say with any certainty the result of the extensions isn't due to any further treatments since the appointment.

More recently Ms S says she didn't get the balayage service detailed on her invoice. Ms S says the balayage process should have created a natural highlighted effect, but instead she got a solid colour. Ms S also complains that she wanted the colour to have a gradual effect

going from darker at the roots, and getting gradually lighter towards the end, rather than the two-tone effect she was given.

Having looked at the images provided I can see the extensions are darker at the root, there also appears to be some subtle highlighting, with some strands appearing lighter in tone. I appreciate Ms S is unhappy with how the balayage highlights turned out, but I can't be sure what was agreed. The invoice only says "balayage", there is nothing to confirm how this would be achieved. So, I can't fairly say the balayage service wasn't as described.

In addition, I can't see that Ms S raised the balayage issue as part of her complaint to the salon, and I think she would have raised this, if this was a key reason for her to enter the contract, so I don't think there was a misrepresentation here. Again, the difficulty here is that due to the lapse of time before Ms S formally complained, I can't be certain the result isn't due to the extensions undergoing further treatment, since her appointment.

Under the Consumer rights Act 2015, if a service is not provided with reasonable care and skill or as agreed, then a breach of contract can be said to have occurred and the supplier of the service should have an opportunity to put things right.

I've already explained above why I can't say with any certainty that the hair colour and balayage service wasn't as described, so I won't repeat this again here. Ms S says she repeatedly had to ask the stylist not to drag the hair across the floor, the stylist didn't use any leave in products when blow drying the extensions and used the wrong brush to blow dry the hair, which Ms S says left the hair very dry. I appreciate that Ms S didn't receive the standard of service expected. However, I haven't seen any supporting evidence to confirm these events took place and even if I had, I don't think these issues would amount to a breach of contract by the salon.

Ms S also says the salon left the hair damaged. Unfortunately, I don't think any damage is obvious from the images provided and given Ms S didn't raise a formal complaint until five months after her appointment, I can't be certain any damage or dryness isn't the result of further colour, use of heat appliances or products. It follows that I can't reasonably say, there was a breach of contract by the salon.

In addition, I don't have any evidence that Ms S contacted the salon within 14 days, in line with the salon's complaints policy. So, I can't say the salon were given an opportunity to assess the hair and try to put things right, so I don't think the salon were in breach of contract, when it later refused to refund the cost or re-colour the extensions.

I'm sorry Ms S is disappointed with her experience with the salon, however I'm not persuaded that there is sufficient evidence of misrepresentation or a breach of contract here, so in the circumstances, I don't think Aqua's decision to reject her section 75 claim was unreasonable.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 9 January 2023.

Karen Dennis
Ombudsman