

The complaint

Miss O has complained about the way NewDay Ltd dealt with her claim for money back in relation to purchases she made using her credit cards.

What happened

In around late 2022 Miss O put down a deposit to purchase a diamond ring and bracelet from a business I'll call J. In early 2023 Miss O paid the remaining balance for the jewellery, part of which was paid for on her NewDay credit cards. Miss O has said she was told by J she would receive diamond certificates for her purchases. However she was given authenticity certificates, which would not set out if the diamonds were natural or lab grown. Miss O was unhappy with this as she's said she believed she was purchasing natural diamonds, and without diamond certificates did not know if this was the case or not.

In early 2023 Miss O also paid a deposit on one of her NewDay credit cards for a set of diamond earrings, she's said she was made to believe she was purchasing from J, however the purchase was made from a business I'll call B. Miss O has said had she known this fact, and that she wouldn't get the diamond certificates for the ring and bracelet, she would not have paid a deposit for the earrings.

Miss O said she tried to obtain the diamond certificates and cancel the purchases with J & B but was unsuccessful, so in July 2023 she contacted NewDay to ask for help.

NewDay have said it was asked to look at a dispute about the deposit paid to B for the earrings, that it looked at raising a claim via MasterCard's dispute rules, however it determined the claim was out of time. So, its team began to review things under section 75 ('S75') of the Consumer Credit Act 1974 ('CCA') and asked Miss O to provide further evidence.

Miss O provided NewDay with copies of all the invoices, authenticity certificates for the ring and bracelet, adverts from J and B's websites, emails from J and B and text messages between her and a business contact that seemed to work for J. NewDay said that it wasn't going to uphold her S75 claim, that the evidence she had provided wasn't enough to show there had been a misrepresentation or breach of contract.

Miss O came to our service, and an investigator considered her complaint. He said that NewDay hadn't acted unfairly when it said the claim was out of time under the MasterCard dispute rules. He'd not looked into the arguments of the roles surrounding J and B, because overall he didn't think there was evidence of a misrepresentation or breach of contract in relation to the jewellery purchases. So, he thought NewDay had dealt with things fairly.

I issued a provisional decision that said:

I'm aware I've summarised the events of the complaint to some degree. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Miss O and NewDay that I've reviewed everything on file. And if I don't comment on something, it's not because I

haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this. Furthermore, when thinking about the key issues, it seems to me that the sale of all three pieces of jewellery is relevant to this complaint, so to ensure fairness I have looked at all of them in my decision, again our powers allow me to do this.

What I need to consider here is whether NewDay – as a provider of financial services – has acted fairly and reasonably in the way it handled Miss O's request for getting her money back paid for all three pieces of jewellery. It's important to note that NewDay isn't the supplier of goods which this dispute centres around.

So, I've thought about the card protections that are available. In situations like this, NewDay can consider raising a chargeback or assessing a claim under S75.

S75

S75 is a statutory protection that sets out, in certain circumstances, if Miss O paid for goods and/or services, in part or in whole, on her NewDay credit cards, and if there was a breach of contract or misrepresentation by the supplier, NewDay can be held responsible.

However, there are certain technical criteria that must be met for a S75 claim to be valid. These criteria relate to the cost of the goods or services, the parties to the transaction, and the way the payment was made. I think the value of the goods meets the relevant financial limits. There also needs to be a 'debtor-creditor-supplier' ('DCS') agreement in place between the parties to the transaction.

DCS

I've firstly looked at the ring and bracelet, which Miss O purchased from J. It's not clear how Miss O paid the deposit in around late 2022. However, regarding the remaining balance of £4000, NewDay have said that a part payment of £2,500 was paid on one NewDay credit card on 27 March 2023. And a statement has been provided for a second NewDay credit card showing a part payment of £523, on 28 March 2023. These payments were made on the same days Miss O received certificates of authenticity for the ring and bracelet. So, I think it follows here Miss O was the 'debtor'. NewDay was the 'creditor'. The 'supplier' was J, a valid DCS agreement was present.

I've looked next at the purchase of the earrings, here Miss O paid B a deposit of £900 on her NewDay credit card on 28 March 2023 and received an invoice. So, it follows here that Miss O was the 'debtor'. NewDay was the 'creditor'. The 'supplier' was B, a valid DCS agreement was present.

Subsequently, I've thought if there has been a breach of contract or misrepresentation. A breach of contract occurs when one party to an agreement breaks either its explicitly agreed terms, or terms which are treated as included – for example because that's what the law says must happen. A misrepresentation is a false statement of fact which a person relies on when deciding to, for example, enter a contract.

The ring and bracelet

Miss O has said she was promised diamond certificates for the items to verify they were natural diamonds, and when she paid the remaining balance around 28 March 2023, upon discovering she would not receive diamond certificates she's said she verbally asked for the purchases to be cancelled.

I thought it worth noting from my investigation I can see that a diamond certificate sets out a diamond's origin, and if lab grown, details of which method was used to create the diamond. The authentication certificate Miss O was given is for valuation purposes and does not include information on either diamonds origin.

Implied terms

The Consumer Rights Act 2015 implies terms into the contract that the goods will be as described (amongst other things). So, I've thought if any implied terms of the contract Miss O had with J have been breached. I've looked to see if diamond certificates were included in the description of the advertisement of the ring and bracelet, I can't see that they were.

Miss O has presented messages which appear to be from the mobile number provided on J's invoice for the ring and bracelet. The messages seem to have been sent after the point of sale. Looking at them, I can't see it's confirmed that diamond certificates would be provided for the jewellery, in fact these messages appear to show J confirming they wouldn't be provided. I must think here about what NewDay has been presented with, two parties are saying two different things I can understand why it would have wanted to be more certain on this point. So, I don't think NewDay was unfair to not uphold the claim on the basis of a breach of an implied term of the contract, because I've not seen enough evidence to conclude that the goods were described as including the diamond certificates.

Expressed terms

I've next thought if any expressed terms of the contract Miss O had with J have been breached. I can't see Miss O was given any documentation at the original sale/when she paid the jewellery's remaining balance, setting out she would receive diamond certificates. So, it follows I don't think there was an expressed term regarding the diamond certificates that could be breached.

Miss O said she verbally asked J for a refund within 30 days of receiving the ring and bracelet. Looking at J's website from the time Miss O purchased the items, I can see that it did have a 30 day returns policy, starting from when the items were received.

NewDay is being asked here to conclude that Miss O has validly exercised her right to cancel and that J did not honour its contractual responsibilities by refusing to cancel the purchase in line with its terms and conditions. NewDay has Miss O's testimony that she asked verbally, but it doesn't have anything in writing, and I note the invoice from J included its number and email address. Miss O has used the number recently to send J messages, however the conversation centres on the diamond certificates. I can understand here why NewDay would want to have been more certain given the evidence it's been presented with.

Whilst I'm not disputing Miss O's version of events I don't think NewDay was unfair to not uphold the claim on the basis of a breach of an expressed term of the contract. I say this because I've not seen enough evidence to certainly say Miss O validly exercised her right to cancel and that J did not honour its contractual responsibilities by refusing to cancel the purchase in line with its terms and conditions.

Misrepresentation

I've thought if there was a misrepresentation made by J which Miss O relied on when deciding to purchase the ring and bracelet. As I've concluded above, I haven't seen advertisements or documents setting out Miss O would receive diamond certificates. And in the messages which look to be from a contact at J they appear to show J confirming diamond certificates wouldn't be provided. Again, NewDay has been presented with

evidence of two parties saying two different things, I can understand why it would have wanted to be more certain on this point. So, I don't think NewDay was unfair to not uphold the claim and say it wasn't persuaded J had made misrepresentations, because I've not seen enough evidence that persuades me that J said it would include the diamond certificates.

The earrings

Miss O has said she thought she was purchasing her earrings from J, so given what happened with the ring and bracelet she hasn't paid the remaining balance for the earrings and has sought to get her deposit back. In reality she purchased the earrings from a different business, B and NewDay have said J and B aren't linked.

Misrepresentation

I think it's helpful to firstly set out my thoughts on whether I think there was a misrepresentation made by the supplier of Miss O's earrings which she relied on when deciding to pay the deposit for the earrings.

I've already concluded above that B is the supplier of Miss O's earrings, here it's not in dispute that it made misrepresentations, Miss O has said they were made by J. I have looked in to whether J and B were the same business or linked in some way when Miss O made her purchases, and from my searches I can't see that the businesses were at the time.

I do take Miss O's point regarding the messages she's received from a number linked to J where all the jewellery purchases are discussed, this is confusing. However, I think it's important to set out here even if I thought J and B were linked, which I don't, I've not seen enough evidence to persuade me that Miss O was told she would be given diamond certificates for her other purchases.

So, I don't think NewDay was unfair to not uphold the claim and say it wasn't persuaded B had made misrepresentations, because it's not in dispute B made misrepresentations. Miss O's said she was speaking to the same person and I can of course understand the confusion, however B's not a linked company with J. Even if I had concluded J had made misrepresentations, NewDay wouldn't be held liable for this purchase. But in any event, I've not seen enough evidence that persuades me that J told Miss O she would receive diamond certificates.

Implied and expressed terms

I've thought if any implied or expressed terms of the contract Miss O had with B have been breached. Miss O doesn't have any documentation from when she put her deposit down for the earrings that sets out B's policy on deposits, whether they are refundable or not. I've looked at B's website from the time of sale, it's mostly silent on deposits, they are mentioned briefly in its FAQs where customers are directed to its office to discuss deposits. Importantly the website doesn't set out B's policy on deposits, and whether they are refundable or not.

So, I don't think NewDay was unfair to not uphold the claim on the basis of a breach of an implied or expressed term of the contract. Because Miss O hasn't provided evidence that there were any expressed terms to breach. And there isn't any evidence to conclude implied terms were breached, there is no description on what would happen to a deposit if the goods weren't paid for in full on B's website.

I note it seems it's previously been offered Miss O can use her deposit paid for the earrings

towards another purchase, as the earrings have now been released. Given my findings she may want to explore this avenue further.

Chargeback

The chargeback process provides a way for a card issuer to ask for a payment to be refunded in certain circumstances. The chargeback process is subject to rules made by the relevant card scheme. It's not a guaranteed way of getting money back. While it's good practice for a card issuer to attempt to chargeback where certain conditions are met and there's some prospect of success, there are grounds or dispute conditions set by the relevant card scheme that need to be considered. If these are not met, a chargeback is unlikely to succeed. And something going wrong with a merchant won't always lead to a successful claim.

The ring and bracelet

NewDay didn't attempt a chargeback for the ring and the bracelet, because from what I've seen it's not clear if Miss O asked it to. However, for completeness I have considered if NewDay had raised a chargeback what the likely outcome would have been.

I have looked at the MasterCard rules, as Miss O's NewDay credit cards belong to this scheme. Given Miss O's arguments I think the reason code 'goods or services were not as described or defective' would have been the most appropriate to use.

Under this reason there is a timeframe that the chargeback must be brought 120 days from the transaction date, or 120 days from the delivery/cancellation date of the goods or services. From all the information that's been provided it appears Miss O made her final payment toward the ring and bracelet on 28 March 2023; there isn't an argument that she didn't receive the jewellery on the same day and as set out previously she's said that she asked J to cancel the purchase within the 30 days.

Miss O contacted NewDay on 30 July 2023, so if she received the jewellery on the same day she would have been out of time. However, if there was a delay in Miss O receiving the jewellery, say it was delivered at a later date, or if she'd told NewDay she'd asked J to cancel the purchase at a later date, there is an argument Miss O would have been 'in time' under the chargeback time limits.

So, I've then thought about what NewDay would have done next, as I set out above, I would consider it good practice for a card issuer (NewDay) to attempt to chargeback where certain conditions are met and there's some prospect of success. I've already concluded that there is not enough evidence J told Miss O that she would get diamond certificates, J have appeared to defend this point. Or that she cancelled with J within the 30 days. I think that it's likely J would have put forward a defence to a chargeback. And based on the evidence she has, NewDay wouldn't have had enough to put forward a successful chargeback. So, I don't think NewDay need to do anything differently here.

I also think it worth adding that a chargeback only covers the payments directly made on the card, given Miss O is seeking a refund of all the payments made towards the ring and bracelet, and it's not clear how all of the payments were made, chargeback may not have been the best option for her.

The earrings

NewDay have said Miss O contacted them on 30 July 2023 to raise a dispute about the deposit of £900 paid for the earrings on 28 March 2023. NewDay said she was out of time

under the chargeback scheme as the dispute wasn't raised within 120 days of the date of transaction.

It's not clear which chargeback code NewDay have looked at to determine Miss O was out of time, I'm mindful that NewDay have said Miss O contacted them initially online under the option charged for cancelled subscription, so I think it was looking at reason code 'credit not processed'.

Under this reason code the relevant timeframe for the claim to be brought is 120 days from the transaction date. So, Miss O was four days late. Given this I don't think NewDay handled the claim unfairly when it said it was out of time.

Miss O didn't agree with the decision, she said –

- She can't evidence she verbally asked for a refund but the messages she's provided show she was continually asked to go to the office, which supports why she doesn't have anything in writing.
- Miss O provided a screenshot of a message which she said confirms she was told she would get diamond certificates for the ring and bracelet.
- The average person would believe that diamond certificates were going to be included because the advertisements contain 'certificate' and 'appraisal certificate'.
- By releasing the earrings, B breached its contract with her.

NewDay agreed with the decision and had nothing further to add.

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 want to thank both parties for taking the time to respond to my provisional decision. I also wanted to reassure Miss O that I've listened to all the recordings of the conversations she's had with our investigator and read the emails she's sent.

I've thought about all of this and whether it changes my decision.

The ring and bracelet

Miss O has said she can't show evidence she verbally asked J for a refund within 30 days. She's pointed me towards the messages she's provided, sent and received after the point of sale, which appear to be from the mobile number provided on J's invoice. She's said these messages tell her to go to J's office to sort things out and support her argument as to why she doesn't have written proof of the cancellation.

I want to remind Miss O that I'm not disputing her version of events. But it remains the case that the invoice from J, provided at the point of sale, included its number and email address. I can understand why NewDay would have wanted to be more certain, given it's being asked to conclude that Miss O validly exercised her right to cancel and that J did not honour its contractual responsibilities by refusing to cancel the purchase in line with its terms and conditions. So, I don't think NewDay was unfair to not uphold the claim on the basis of a breach of an expressed term of the contract.

Miss O has sent a screenshot of a message which she wasn't sure if I'd seen. She's said it shows J told her she would be getting diamond certificates for the ring and bracelet. I have seen this message, and reviewed it along with other messages Miss O has said she also

received from J. Looking at everything together I don't agree with Miss O. The messages when read in their entirety appear to show J confirming the diamond certificates were an extra cost, and that they would not be provided.

Miss O has said when looking at the advertisements an average person would reasonably believe diamond certificates would be included. Particularly because they mention 'certificate' and 'appraisal certificate'.

I've looked at the advertisements along with all the other evidence Miss O has provided. They do not explicitly say diamond certificate's will be included with the ring and bracelet. I've looked at the other documents from the point of sale and again they also don't set out Miss O would receive diamond certificates. Finally, the messages she's provided appear to show J confirming diamond certificates wouldn't be provided for the ring and bracelet. NewDay has been presented with evidence of two parties saying two different things, and I can understand, when looking at all the evidence, why it would have wanted to be more certain on this point. So, I don't think NewDay was unfair to not uphold the claim and say it wasn't persuaded J had made misrepresentations or breached the contract. Because when considering everything together, I've not seen enough that persuades me that J said it would include the diamond certificates.

The earrings

Miss O has said that by B releasing the earrings, following her paying the deposit but not making the final payment, it has breached its contract. I don't agree, the fact remains Miss O didn't pay the final balance, so the issue here is the deposit. There is no documentation or information on B's website that set's out it's policy on deposits and whether they are refundable or not if the remaining balance for the item isn't paid. So, there is insufficient evidence that either an implied or expressed term has been breached, and NewDay wasn't unfair to not uphold the claim on this basis.

However, it would appear from the recent message Miss O has provided (which I've attached to this decision) that the earrings haven't been released and can be picked up. So, she may want to explore this avenue further.

Having read through my decision again, I wanted to take this opportunity to summarise my findings. And say I didn't write it with the intension of blindsiding Miss O with technicalities. Here she may well have been speaking to the same person who represented both J and B, and I can understand the confusion that's caused. As I've said in my provisional decision, I'm satisfied the relevant relationships are in place for both businesses. When looking at both businesses and the arguments that have been presented, I don't think the available evidence persuades me that there have been misrepresentations and/or breaches of implied or expressed terms of the contracts. And for similar reasons the chargebacks, whilst likely out of time, probably wouldn't be successful under goods not as described or credit not processed. And given the nature of the claim's chargeback may not have been the best option for Miss O.

So, to conclude, for the reasons given above, including those in my provisional decision, I don't find I have grounds to direct NewDay to take further action.

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 Miss O to accept or reject my decision before 6 March 2026.

Helen Boulton-Agg
Ombudsman