

## **The complaint**

Mr T has complained about how NewDay Ltd (NewDay) handled a refund claim he made.

## **What happened**

The details of this complaint are well-known to both parties, so I won't repeat them again here. The facts aren't in dispute, so I'll focus on giving the reasons for my 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've read and considered the evidence submitted by the parties but won't comment on it all – only the matters I consider to be central to this complaint. This isn't intended as a discourtesy but reflects my role in resolving disputes informally.

It's important to note that NewDay aren't the provider of the services here – so in deciding what is fair and reasonable, I'm looking at their particular role as a provider of financial services. In doing so I note that because Mr T paid for this transaction using a NewDay credit card, both chargeback and a Consumer Credit Act 1974 (CCA) Section 75 (S75) claim could possibly help him. So in deciding what is fair and reasonable I've focused on this.

Mr T's complaint is regarding a training course purchased using his NewDay credit card, from a supplier I shall call 'R' in September 2022, to the sum of £9,500. He says that while the 14 week course was completed, on-going mentorship and access to its training portal was promised.

However, R stated it would be ending its business a year later in October 2023 and so those services would also end. Mr T has said that he was promised mentorship until he achieved £10,000 a month in revenue as well as access to the training portal and so there has been a breach of contract and misrepresentation by R.

## ***Chargeback***

Chargeback is the process by which settlement disputes are resolved between card issuers and merchants. A consumer isn't entitled to chargeback by right. But where there are grounds to raise one and it has reasonable grounds for success, it is good practice for one to be raised by the card issuer.

However, a chargeback isn't guaranteed to succeed and is governed by the limitations of the particular card scheme rules (in this case Mastercard). I've considered the relevant chargeback rules in deciding whether NewDay acted fairly.

The relevant chargeback code here would be 'Goods Not Provided'. I've therefore considered the evidence available with mind to this chargeback rule and whether there was an opportunity for NewDay to raise a claim with a reasonable prospect of success.

These rules clearly state that for disputes involving the interruption of ongoing services, a claim must be raised within 120 days from the latest anticipated delivery or performance date from the merchant. I see R provided notice on 29 October 2023 for their plans to end the service. I also have a copy of an email from Mr T to the new owners of the business from 30 November 2023 asking for a refund.

I do consider then that Mr T became aware that he wouldn't receive any more course services at the end of October 2023. NewDay has said in their final response letter to Mr T that he first contacted them about what'd happened almost a year later in September 2024. This would be outside the 120 day time limit for a chargeback to be raised as stated under Mastercard rules.

As a result I don't think NewDay did anything wrong in not raising a chargeback claim here as there wasn't a reasonable prospect of success had they done so. Also, as the course itself had already been completed, and due to the nature of the complaint, this would've been better suited for consideration under a S75 claim for breach of contract or misrepresentation. I've considered this below.

## **S75**

S75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there is either a breach of contract or misrepresentation by the supplier of goods and services.

To assess a valid claim, NewDay would've needed to consider all relevant evidence for the alleged breach of contract or misrepresentation. But for there to be a valid claim under S75 there are certain technical requirements and I'm satisfied they've been met here.

The crux of Mr T's complaint is that he believes the main segment of his training remained undelivered and that was the ongoing mentoring and access to the materials. For Mr T's claim under S75, I would need to be satisfied that R breached their contract to him or made a misrepresentation which induced him into the contract. S75 makes the credit provider jointly liable with the supplier where those conditions are met, but it doesn't create a right to refund simply because the consumer is dissatisfied with the outcome of a service.

In this case, I've considered what R agreed to provide under the contract. The terms indicate that Mr T would receive access to the training programme. The agreement also explains that participants would have access to live coaching calls, accountability groups and support for a defined programme period of 14 weeks until graduation.

In addition, the terms refer to ongoing mentorship until the consumer reached £10,000 per month in revenue. However, the element of the service is clearly expressed as conditional. It applies where the participant completes the training, launches their coaching business by the graduation date and continues to follow R's advice and practices.

From the evidence available, it appears Mr T was able to access and take part in the training programme itself. So I'm satisfied he received the course content and training materials that formed the central part of what he paid for. The terms also indicate that access to the online portal was provided for the life of the company, which suggests the parties understood that certain elements of the service would only continue while R remained in operation.

While R has stopped their service (and by R I mean the original supplier, as Mr T has said the business has since been taken over), a fact that a business stops operating doesn't necessarily mean the contract has been breached when the main service has already been provided.

I've also taken into account that the contract states that the provision of the programme is subject to change and that the supplier reserves the right to amend or alter elements such as training materials, group call schedules and support provisions. This indicates that aspects of the programme, including mentoring and supporting arrangements, were flexible rather than fixed contractual deliverables. When read alongside the terms describing the programme structure, it appears the only defined service period was the 14-week programme itself.

I appreciate Mr T says he expected on-going mentorship support and this was the core of the programme for him. However, the wording of the terms and conditions show that any support beyond the programme itself was conditional. The agreement also explains that participants would only receive the coaching calls, groups and support during the 14-week programme until graduation.

It then states that R would continue working with participants after that point only if they had completed the training, launched their business and continued to follow R's advice and practices. This indicates that the structured service being offered was the training programme itself, with any further support dependent on the conditions being met.

Taking everything into account, I'm not persuaded R failed to provide the substance of what Mr T paid for. While R's closure meant some potential future support could no longer be provided, I consider that the core training programme was delivered. I therefore can't agree that there has been a breach of contract here with mind to S75 and that NewDay need do anything more.

I've also considered whether R misrepresented their services to Mr T. For misrepresentation, there would need to be a false statement of fact that induced Mr T into entering the contract. From what I've seen, the statements relied on relate to the support and membership offered as a part of the programme.

However, I haven't seen evidence that these statements were false at the time the agreement was entered into. The terms explain the conditions under which further support would be provided and, based on the information available, it appears R intended to provide the programme and associated support when the contract was made.

The fact R later ceased trading doesn't mean the statements made at the outset were untrue. So I can't agree that R misrepresented their services to Mr T and NewDay need to do anything more here either.

I appreciate this situation will be frustrating for Mr T, particularly given R is no longer operating and further support isn't available. However, based on the evidence I've seen, it appears the training programme itself formed the core of what was paid for – and this was provided.

While the terms refer to the supplier continuing to work with participants until they reached their £10,000 per month in revenue, that support was conditional and dependent on a number of factors rather than a defined service forming the central part of the agreement. Taking everything into account, I'm not persuaded it would be reasonable to conclude R breached the contract or made a misrepresentation that would make NewDay liable under S75. I therefore won't be asking them to do anything more.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 8 April 2026.

Viral Patel  
**Ombudsman**