

The complaint

Miss M complains that John Lewis Financial Services Limited failed to help her reclaim money in respect of a personal training, nutrition and dietetic services programme.

What happened

Miss M signed up to a programme in November 2021 with a company I'll call 'S'. The cost of the programme was £3,800. In early 2022, Miss M contacted S as she was unhappy with the amount she had paid to them and what she was getting in return. She suggested an extension to the programme or a reduction in the overall cost. Miss M says S initially agreed to extend this by a month but later revoked this.

Miss M complained to S saying she hadn't achieved the expected results despite participating fully in the programme. She said to S that their contract explained that if clients didn't achieve results, they would be entitled to full refund. However, S refused to refund her.

Miss M asked John Lewis Financial Services Limited ("John Lewis") to refund her the money she had paid to S, which totalled £2,400, which she paid using her John Lewis credit card.

John Lewis considered whether they could raise a chargeback for Miss M, but didn't do so as they thought it was out of time. They then considered Miss M's claim under Section 75 of the Consumer Credit Act 1974 ("Section 75") but rejected it. John Lewis said S's terms and conditions stated that a customer was only eligible for a refund if they followed the programme completely and Miss M hadn't done this. They said Miss M had confirmed she hadn't joined live events and zoom calls which was one of the requirements under S's terms and conditions.

Miss M complained to John Lewis about the outcome of her claim, but they didn't uphold it. So, Miss M referred the matter to us.

Our investigator looked into what had happened but didn't recommend that Miss M's complaint should be upheld. He felt, in summary, that John Lewis were correct not to raise a chargeback and had handled Miss M's Section 75 reasonably as she wasn't contractually entitled to a refund.

Miss M didn't agree and so her complaint has been passed to me for a 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 want to acknowledge I've summarised the events of the complaint. 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 M and John Lewis 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.

There are typically two avenues here that John Lewis as the provider of credit could have considered.

Chargeback

In certain circumstances, when a cardholder has a dispute with a merchant, as Miss M does here, John Lewis (as the credit card issuer) can attempt a chargeback. The process involves the card issuer disputing payments made on the card through a dispute resolution scheme operated by the companies which run the card networks.

I would normally expect a credit card issuer to attempt a chargeback if there was a reasonable prospect of this achieving a successful outcome. John Lewis didn't attempt a chargeback in this instance and said this was because the claim had been made by Miss M beyond the 120 days allowed for under the card scheme rules.

Miss M's request for a claim was essentially two-fold. One, that she didn't achieve the results she expected from S's programme. And, two, that S didn't give her a full refund for this as set out in their terms and conditions.

The chargeback that best suited Miss M's claim was under the reason code '*goods and services were either not as described or defective*'. The card scheme rules for this set out that a claim should be made within 120 days from either when the services ceased, from the transaction settlement date or from delivery of the goods and services.

It's unclear to me whether John Lewis considered anything other than the dates Miss M paid S the money, rather than, say, when S provided the goods and services. However, even if I felt that John Lewis interpreted the scheme rules incorrectly or unreasonably, I don't find this would have made a difference. I say this because, if John Lewis had raised a chargeback, S had already refuted the substance of Miss M's complaint when she contacted them to complain. So, it's likely S would have defended the chargeback in the same way and that John Lewis wouldn't have pursued the claim any further as a result.

Section 75

In deciding what I think is fair and reasonable I need to have regard to, amongst other things, any relevant law. In this case, the relevant law is Section 75 which says that, in certain circumstances, if Miss M paid for goods and services, in part or whole, on her credit card, and there was a breach of contract or misrepresentation by the supplier, John Lewis can be held responsible.

For a valid claim under Section 75 there must be a debtor-creditor-supplier relationship in place. This normally means the person who owns the credit card account needs to have a claim for breach of contract or misrepresentation against a company they have paid using their credit card.

Our investigator said there were some doubts that the above criterion had been met because Miss M paid a different company to S. I've seen that Miss M paid a company with a different name to that of S. However, I've also seen that the CEO and founder of S replied to Miss M when she complained and that he gave website details to the company to whom Miss M made payments. So, although I don't know the specific links between both companies, I think it likely that there is a link between them to the extent that the debtor-credit-supplier relationship is in place.

In deciding whether there has been a breach of contract or a misrepresentation, I've firstly looked at the express terms of S's contract with Miss M. This set out that the goods to be provided were the digital content provided to Miss M, which was personalised to her and based on her own requirements. The contract also set out that the services to be provided was the coaching provided by S's team.

I've not seen persuasive evidence that S failed to provide either the goods or services to Miss M. Indeed, Miss M says that she participated fully in the programme, and I've not seen evidence that she contacted S to say she wasn't receiving coaching or the digital content.

I've also considered that The Consumer Rights Act 2015 (CRA) implied a term into Miss M's contract with S that the goods provided would be of satisfactory quality, by which the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. The CRA also says that satisfactory quality includes whether the goods were fit for the purpose for which they were intended.

It also implied a term that the services provided would be done so with reasonable care and skill. I believe reasonable care and skill to include what a reasonably competent provider of the same kind of service would provide.

Miss M's complaint about the programme was that she didn't achieve the desired results she expected despite following everything she was told to do. By this, I've assumed 'results' to mean weight loss as Miss M has said that was why she agreed to enter the programme. So, it appears that Miss M feels the implied terms around goods and services as set out in the CRA weren't adhered to because she didn't achieve the expected results from the programme.

The difficulty here though is I've not seen sufficient evidence that S provided a specific guarantee on what those results would be, or that Miss M's disappointment with those results were down to a flaw with the programme or anything other than her subjective opinion on the results not being achieved. I've also seen potentially conflicting evidence in that Miss M says she didn't lose any weight but one of S's team sent a message saying there had been a '*22kg weight loss*'. That might be a result of the first course Miss M undertook, which she is not complaining about, but this isn't sufficiently clear to me. S's contract stated that the '*aim of the programme is to achieve individually desired body composition results in a short period of time to restore mental and physical health*'. I would imagine that the word 'aim' is deliberate in that there was no guarantee. Overall, I can't say that S's programme didn't provide Miss M with any benefit or results bearing in mind they did provide her with coaching and the digital content as set out in their contract and that there's no evidence that this was substandard in any way.

As such, I don't find that S breached their contract with Miss M or that they misrepresented this, in respect of the requirements under the CRA.

The other aspect of Miss M's complaint is S failing to provide a refund in line with their terms and conditions. However, as I haven't been able to find that Miss M didn't achieve results, I can't fairly say that S breached their contract in not agreeing to provide her with a refund. I realise that S, and John Lewis, has made other arguments around Miss M not completing all the requirements set out under this section of the contract. However, I don't find this to be relevant bearing in mind my view on this particular part of the complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 8 December 2023

Daniel Picken
Ombudsman