

## **The complaint**

Mr L complains that NewDay Ltd won't refund several disputed card transactions.

## **What happened**

Mr L is disputing seven card payments to a club he visited whilst on holiday in Ukraine between 5 and 22 November 2019, totalling just under £1,500.

Mr L says he was on holiday with friends. They were going from place to place and visited the club for a meal, drinks and entertainment. Mr L has explained that he has visited the club on previous trips and usually went to the club every day.

Mr L says whilst at the club he bought food and cocktails and tried to settle his bill using his NewDay bank card. Mr L says he tapped his card on the card terminal, but it didn't work. So, he inserted the card and entered his PIN. Mr L says he didn't see the display on the terminal and the staff member then walked away with his card and the card reader. The staff member then came back to Mr L and told him that his card had been declined. Mr L says the staff member was angry and he felt very embarrassed – especially as he was out with friends. Mr L says the club's security man then came over and told Mr L he'd have to settle his bill in cash and warned him not to make a fuss otherwise he'd call the manager over. So, Mr L settled his bill in cash, but he didn't get a receipt for the transactions.

Mr L says he went back to the club again, but each time he tried to pay his bill with his card, it declined, after he'd put his card and PIN into a card machine. And each time he paid in cash.

Mr L said he wasn't able to check his bank account online whilst he was away due to problems with the internet connection. He checked his account online as soon as he got back to the UK and saw that four transactions had debited his account. On 12 November 2019, he called NewDay and raised a fraud complaint. And asked NewDay for a refund. NewDay investigated and decided not to refund Mr L. It said, when Mr L had entered his card and PIN into the card machine, he'd authorised the transactions. Mr L was very unhappy with NewDay's response. He said he'd been the victim of a cruel scam and the club was operating as a criminal enterprise ripping off English tourists. So, he decided to return to the Ukraine and visit the club in an attempt to expose what was happening and convince NewDay to refund him.

On 22 November 2019, Mr L went back to the club. Mr L says he had a meal and drinks in the club as he'd done previously. He tried to pay using his NewDay card and entering his PIN, but the staff told him again that the transaction had been declined. Mr L says he felt threatened and intimidated, so he settled the bill in cash.

On 26 November 2019, Mr L called NewDay and disputed three transactions he'd made at the club on 22 November 2019. NewDay declined Mr L's claim. It said it hadn't seen any evidence Mr L's card had been declined, and he'd authorised the transactions using his PIN. Unhappy with this response Mr L brought his complaint to our service where one of our

investigators considered it. The investigator didn't uphold Mr L's complaint. He said Mr L had authorised the transactions.

Mr L disagreed so the complaint has been passed to me to decide.

### **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.

Having done so, I agree with the investigator that it wouldn't be fair to ask NewDay to refund the transactions and for much the same reasons.

The investigator wrote a detailed view that sets out the full facts, the transactions, and the evidence. Both Mr L and NewDay have read the investigator's view. So, I won't repeat every detail here, only those which form the basis of my decision. However, I can assure Mr L that I've read the file, including his comments and evidence. And listened to all the relevant call recordings.

When considering what's fair and reasonable, I'm required to take into account relevant law and regulations; regulators rules, guidance and standards; codes of practice and where appropriate what I consider to be good industry practice at the time.

NewDay is required to refund the amount of an unauthorised transaction. The relevant regulations, to this effect, are the Payment Service Regulations 2017 (the PSRs 2017). But the bank can hold Mr L liable for any disputed transaction if the evidence suggests that it's more likely than not that he made or authorised them himself.

Having reviewed NewDay's technical evidence, I'm satisfied that Mr L's genuine card was used to make the disputed transactions and that they were authenticated. But, the regulations relevant to this case say that this is not on its own enough to enable NewDay to hold Mr L liable for them. So, I also need to think about whether the evidence suggests that it's more likely than not that Mr L consented to the transactions being made.

NewDay's records confirm that for each transaction, the chip in Mr L's card was read, and the PIN was entered correctly. The evidence shows there were no declined transactions despite what Mr L says the club staff told him. Mr L has also consistently said he put his card in the card reader and entered his PIN for each transaction when he was at the club. So, I'm satisfied that Mr L authorised the transactions.

I note that Mr L says he couldn't see the card reader screen at the time of each transaction so he couldn't see what he was being charged or if the transaction had gone through. However, under the regulations I'm afraid it doesn't matter if the payer doesn't know or see the amount they are being charged. They are still treated as having consented to the payment, simply by using their card and PIN.

Of course, I can't say exactly what happened when Mr L visited the club. I note that Mr L has provided evidence of messages between him and staff at the club which he says shows he's been the victim of criminals. And that the staff are involved in bribery and corruption of government officials. But I'm afraid all this may help clarify is the nature of the scam that he fell victim to. I also question why Mr L kept going back to the club given the way he was treated and that he believed he'd been scammed.

Mr L has also told us that he felt intimidated and threatened by staff at the club when using his card and was forced to pay cash. But my role isn't to decide whether Mr L wouldn't have carried out the transaction under normal circumstances. I can only consider whether Mr L

gave valid consent to the transactions under the PSR's 2017, which entitles the bank to debit his account. The payer only needs to consent to the execution of the payment – and that's not in dispute here. Mr L has consistently said he entered his PIN. The dispute here is that Mr L says he was told the transaction didn't go through. So, he paid cash – in other words he paid twice. And he was scammed.

Mr L may have a dispute directly with the club if he feels he was overcharged or duped in some way but that doesn't mean NewDay is liable to refund those transactions. The dispute Mr L has here is between him and the club he was in. The contracts he may or may not have entered into with the club are not for me to decide. I'm looking at the relationship between Mr L and NewDay and I'm satisfied NewDay was entitled to debit Mr L's account for the transactions he later disputed. So, I don't think NewDay has done anything wrong when it declined to refund him.

In summary, based on the evidence, I'm sorry to disappoint Mr L, but I find that he has authorised the disputed transactions and NewDay is entitled to hold him liable for them.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 11 January 2021.

Sharon Kerrison  
**Ombudsman**