

Complaint

Mr O is unhappy with the way New Day Ltd trading as Aqua ("NewDay") handled his chargeback request.

Background

Mr O has a credit card with NewDay. In November 2019, the security of his account with a travel website was compromised and used to pay for accommodation. He received a text message from the travel website explaining that the email address connected to his account had been changed. The same day he noticed a payment had been collected from his NewDay account.

He told the travel website that his account had been hacked and contacted NewDay to tell them he hadn't authorised this payment. After Mr O had signed the appropriate form, NewDay raised a chargeback on his behalf. The website responded to the chargeback request by asserting that Mr O had authorised the payment and provided evidence to justify its conclusion.

NewDay shared this response with Mr O on 13 March 2020. It said that, if he wanted to pursue the chargeback, he would need to complete a second form and return it within 14 days. Mr O spoke with an employee of NewDay on 17 March 2020 and confirmed that he didn't agree with the response to the chargeback. He says he made NewDay aware that the merchant had missed that the email address used in connection with this booking was different to Mr O's email address. NewDay reiterated that if Mr O wanted to pursue the chargeback, he'd need to return the signed declaration form to them.

On 2 April 2020, NewDay withdrew the chargeback on the basis that Mr O hadn't complied with the time limits. Mr O was unhappy with this and so he complained. NewDay responded by saying that it was bound by the rules of the chargeback scheme and its timelines were applied strictly. It didn't have any discretion. Nonetheless, it felt that it had provided a poor quality of customer service to Mr O and so agreed to pay him £20 in recognition of the distress and inconvenience this had caused to him.

Mr O was unhappy with NewDay's conclusions on the chargeback, so he brought a complaint to this service. It was looked at by an Investigator who upheld it. The Investigator said that NewDay had enough information to challenge the rebuttal from the merchant. Mr O had explained during a telephone call that its response hadn't acknowledged that the email address associated with his account had changed. Even if Mr O hadn't managed to return the second declaration form, there was no procedural need for it to be completed since NewDay knew what Mr O's view was.

NewDay disagreed with the investigator's view of the complaint. It said that it wouldn't normally look to process a second chargeback without additional evidence being provided by the consumer. It also said that Mr O was aware of the time sensitive nature of the chargeback process – it didn't think he should've waited so long before contacting them to find out the address to send the declaration form. Because NewDay disagreed with the opinion reached by the investigator, the complaint has been passed to me to consider and

issue a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr O says that he did complete the second declaration form and return it to NewDay. He says the deadline was missed due to circumstances beyond his control – for example, it might've been a result of delays in the postal delivery system.

However, I don't think it particularly matters whether Mr O posted the form in time. NewDay spoke to him on 17 March 2020. As a result of that conversation, it knew that he disagreed with the basis of the merchant's response to the chargeback. He also provided additional evidence by affirming that the email address used to make the booking was not his. As I understand it, the chargeback rules don't impose a requirement that a signed declaration be completed by the customer each time. NewDay clearly had enough information to be able to challenge the chargeback on Mr O's behalf and should've done so following that conversation.

There is, of course, no guarantee that a chargeback will succeed. But on balance, I think it's more likely than not that this one would've done. From the evidence Mr O has provided, the email address associated with his account was changed just before the payment was made to one not connected to Mr O. He raised this with both the merchant and NewDay very promptly. On balance, I think it's more likely than not that Mr O didn't authorise this transaction but that his card details, stored in his account with the merchant, allowed a fraudster to make payments.

Overall, I think NewDay should've proceeded with the chargeback after its conversation with Mr O regarding the merchant's rebuttal. If it had done so, I think it's more likely than not that the chargeback would've been successful.

Final decision

For the reasons I've explained, I uphold this complaint.

NewDay Ltd needs to refund the transaction of £349.91 to Mr O's account. If this payment attracted interest or charges, NewDay Ltd needs to refund these too.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 17 June 2021.

James Kimmitt
Ombudsman