

## The complaint

Ms B complained because NewDay Ltd refused to refund her for a £499 transaction on her credit card, which she said she didn't authorise.

## What happened

At around 4pm on 24 August 2020, a £449 purchase was made at a shop, using Ms B's NewDay credit card and PIN.

On 25 September, Ms B sent a message by app to NewDay saying *"I don't recognise this transaction of [shop name]."* She sent a similar message the next day. On 30 September, NewDay emailed Ms B asking her to phone its fraud team as soon as possible.

Ms B sent another app message on 10 October, and NewDay sent another email on 11 October asking her to phone its fraud team.

Ms B sent two more app messages on 21 and 23 October, and NewDay sent another email on 24 October asking her to phone its fraud team.

Later that day, Ms B emailed NewDay from a different email address. She said she hadn't noticed the transaction till September and she'd reported it around 12 times, but nobody had responded. She complained that she was also incurring interest on a transaction that wasn't hers. She said *"Get it refunded back and any interest it has occurred."* Finally she said *"I would like to keep a complete record of my case so please reply to this email address."*

In its final response to Ms B's complaint, NewDay said that it had responded to Ms B and had asked her on 11, 24 and 25 October to ring the fraud team. NewDay also said that the card scheme's maximum timescale for a chargeback was 120 days, which had now been exceeded. So it couldn't treat this as a disputed transaction. NewDay said that it couldn't prevent interest accruing on a transaction until it was being investigated. As a gesture of goodwill it refunded £27.31 interest, but said that interest would continue to accrue until Ms B cleared her balance.

Ms B wasn't satisfied and complained to this service.

Our investigator upheld Ms B's complaint. She explained that a chargeback can't be raised anyway for a transaction which had used the card's genuine chip and correct PIN, so NewDay's reason for rejecting Ms B's complaint wasn't correct.

The investigator considered the options for what might have happened. She didn't think an unknown third party had carried out the transaction. She thought it was more likely that an opportunistic known third party had completed the transaction without Ms B's consent. So the investigator considered NewDay should refund the £449 disputed transaction; rework the account as if the transaction hadn't happened, refunding any interest and charges; and pay £150 compensation for the trouble and upset caused.

NewDay didn't agree. It said that a known third party was an option, but Ms B had confirmed that no-one else could have had access to her card, other than her son who was only 14. So it said it couldn't accept that the transaction had been for a fraud.

### **my provisional findings**

I issued a provisional decision on this complaint. Before doing so, I considered all the available evidence and arguments to decide what would be fair and reasonable in the circumstances of this complaint.

In my provisional decision, I explained that the relevant regulations for Ms B's disputed transaction aren't the card scheme's chargeback rules. They are the Payment Services Regulations 2017, which make provisions for the Consumer Credit Act (CCA) 1974 to apply. Where a credit facility has been used, as here, the relevant legislation is section 83 of the CCA. This says that the debtor (the account holder) isn't liable if the card was used by someone who didn't have their consent.

Applying these Regulations, it's first necessary to see whether the disputed transaction was authenticated. That's the technical part, and here, I had seen the computer information which showed that the £449 transaction was made using the genuine card, with its embedded chip, and the correct PIN.

The next step is to determine whether or not Ms B authorised the transaction. So I considered the evidence about this.

Ms B told our investigator that she lives with her mother and teenage son. Her card is kept in her purse, in her handbag, which is hung up in the shoe cupboard. Ms B's mother is disabled and rarely leaves the house. Ms B said her PIN wasn't written down anywhere, and other than her son, she couldn't think of anyone else who would have seen her use the card and PIN. She said she used it mostly for online shopping. I didn't have a long history of Ms B's card usage, but there was a small online transaction earlier in the day on 24 August, and other online transactions on 27 and 28 August.

Given this information about the card and where it was kept, I considered it was most unlikely that an unknown third party fraudster carried out the transaction. I couldn't see how any such person could have obtained the card and returned it to Ms B's shoe cupboard without her knowledge. And there was no clear way that a third party fraudster could have known the PIN. Also, it would be most unlikely that any such fraudster would have returned the card, or only made one large transaction. They'd have kept the card and continued to spend on it.

So that left two options: that Ms B carried out the transaction herself, or someone known to her, for example her son, carried it out. I realised that was a difficult message to give, but it was what the evidence led me to believe here. I thought that was much more likely than an unknown third party fraudster, for the reasons I've set out. I also noted that Ms B also didn't report the transaction for a month, and didn't follow NewDay's messages to ring its fraud team, with the urgency that it had suggested. So my provisional decision was that I didn't intend to uphold this complaint.

### **responses to my provisional decision**

Ms B said she was extremely disappointed as she was paying for someone else's fraudulent activity. She said she knew she hadn't made the transaction, and she didn't know how feasible it would be to suggest a teenage boy had done it, or her disabled mother. She said

she was past angry, and utterly disappointed and frustrated at having a debt that wasn't hers.

NewDay didn't reply by the date set for responses.

### **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 recognise that Ms B says she's frustrated at having a debt which wasn't hers. But for the reasons set out in the provisional decision, I still consider it's much more likely that Ms B or someone known to her, for example her son, carried out the transaction, rather than an unknown third party.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 6 May 2021.

Belinda Knight  
**Ombudsman**