

## **The complaint**

Ms I complains that NewDay Ltd trading as Debenhams ("NewDay") refused to refund several disputed transactions made using her credit card.

## **What happened**

Ms I was on a shopping trip in the run up to Christmas. She'd made several purchases using her NewDay credit card and then used a bus to travel to another area. Ms I had her baby with her and numerous packages and a pram. When she got off the bus, she went for lunch and couldn't locate her credit card. Ms I didn't think anything was wrong as she had a lot of bags and assumed the card was in one of them. She paid for the lunch with a different card and eventually returned home.

The next day Ms I noticed several transactions totalling £94.49 that she didn't recognise and when she looked for her card it was missing. Ms I notified NewDay about the transactions. NewDay's records show Ms I confirmed she still had the card. NewDay cancelled Ms I's card and re-issued a new one.

Ms I pointed out to NewDay that she couldn't have made the transactions she was disputing because of the timings and the distance between the stores. Ms I said it would have been impossible to travel between the two areas based on the timings of the transactions.

NewDay didn't agree, they relied on the answer Ms I had given about still having her card and the timings of the transactions. NewDay said that a genuine transaction had been made after a disputed one and this meant that there wasn't a plausible explanation for the disputed transactions.

Ms I later believed she'd lost the card somewhere on her journey, either on the bus or near the bus stop. She said the disputed transactions were all made close to the bus stop. Ms I pointed out that all these transactions were under the contactless limit, which meant that whoever had used the card wouldn't need the PIN number.

NewDay accepted they'd wrongly classed Ms I's case as a "card not present" issue and this caused a slight delay in their investigation. They awarded Ms I £15 for this oversight but refused to refund the transactions.

Ms I remained unhappy with NewDay's investigation and brought her complaint to our service for an independent review. It was looked at by one of our investigators who thought it should be upheld and recommended NewDay refund the disputed transactions and to restructure the account by removing any interest or charges caused by the disputed transactions.

NewDay disagreed, they continued to make the point that Ms I had told them she still had the card in her possession when she first spoke to them the day after she noticed the disputed transactions on her account.

I gave both parties an opportunity to comment as I was minded to increase the

compensation. In her response, Ms I said that she'd been trying to close her account with NewDay, but without any success. NewDay responded that they thought the £15 compensation was sufficient.

The 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.

When considering what is fair and reasonable, I am required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. In cases when there is a dispute about what happened, I base my decision on the balance of probabilities. In other words, what I consider is most likely to have happened in the light of the available evidence.

The rules which are relevant to Ms I's complaint are the Payment Services Regulations 2017 (PSR's) and where credit is used, the Consumer Credit Act 1974. In short, they say NewDay must refund any transactions which are not authorised.

NewDay's terms and conditions related to the credit agreement state:

*".... You will not be liable for (and we will refund) any other transactions not authorised by you or an additional cardholder, including transactions made with the card or card number remotely (for example online, phone or mail order). We will refund the unauthorised transaction as soon as we can and in any event by the end of the next working day"*

Both parties have made their arguments based, in part, on the timings of the transactions. Ms I argued that it would have been practically impossible for her to make all the transactions based on the timings of the payments and the distance between the businesses.

NewDay made a similar argument based on their records that Ms I still possessed the card. They pointed out that a transaction Ms I recognised as genuine was made after the disputed ones and because she'd confirmed she still had the card, this meant it was implausible that it was someone else who'd made these disputed transactions.

Where there is conflicting evidence, I have concluded what I believe is most likely, on the balance of probabilities.

Ms I told us that once she noticed the transactions, she looked for her card and couldn't find it. She then called NewDay. NewDay no longer have a recording of that call. NewDay produced a declaration they sent to Ms I following the call which refers to Ms I still having the card, but it doesn't appear that Ms I ever acknowledged the declaration. NewDay later confirmed they shouldn't have sent the declaration because they'd misunderstood the fraud being reported.

Ms I told us that she couldn't find the card and together with the transactions she didn't recognise on her account, was the reason for calling NewDay. Whilst I can't say what happened during the call, it would seem likely that the whereabouts of the card was discussed – because that was the principle reason why she was calling them. So, it would

seem odd and out of keeping with her otherwise clear and consistent version of events to then tell them she still possessed the card.

NewDay continued to rely on their understanding that Ms I still had the card, and this was the main reason for seeking a decision. In their response to our service they said:

*“To the best of my knowledge, Miss I has not disputed that she told us the card was still in her possession, which I would have expected her to do if it had not been in her possession.”*

NewDay’s own records show that in February, Ms I told them she’d lost her card, which is at odds with the position NewDay have maintained. So, taking everything into account, I’m not persuaded that NewDay accurately recorded Ms I’s information when she reported the loss.

NewDay later confirmed that some of the timings of the disputed transactions used a different time zone. Once this was corrected, it showed the series of disputed transactions claimed by Ms I happened once she’d got off the bus and confirmed they were all contactless. NewDay didn’t alter their position, even after the timings supported Ms I’s version of events. It was no longer the case that a legitimate transaction had taken place between the disputed ones.

I asked for further information about the transactions made on the card. NewDay were able to say that no further transactions were made on the card after the last unauthorised one at 3.55 pm. They were unable to confirm if this was because the contactless limit was reached (based on the number of allowable transactions before the PIN would be needed) or because the card was cancelled, but I think it’s supportive of Ms I’s version of what happened because no transactions above the contactless limit were attempted.

Without the PIN, the card would no longer be useful to an opportunistic thief, which I think was more likely than not the case here. Ms I’s consistent testimony coupled with the pattern of contactless payments leads me to conclude that, on a balance of probabilities, Ms I didn’t make the transactions she’s disputed.

Because I’m satisfied she didn’t consent to the transactions, they are unauthorised, and this means that NewDay are required to refund them to Ms I.

NewDay recognised they delayed the original investigation because they mis-classified it. They awarded £15 compensation and credited it to Ms I’s account. But, I don’t think that reflects the full situation caused by NewDay when investigating this complaint. NewDay relied, in part, on incorrect data to justify their position and deny a refund to Ms I.

NewDay continued to place significant emphasis on the phone call when Ms I reported the loss but didn’t appear to take the updated timings into account or consider their own records. I don’t think NewDay properly considered the complete picture which caused unnecessary ongoing stress and upset and should pay an additional £50 to Ms I to recognise this.

Ms I told us that she’d been trying to close her account with NewDay, but without any success. I can see a reference in NewDay’s own notes that Ms I wished to close her account in March 2020, but this doesn’t appear to have been taken forwards. It doesn’t appear this request from Ms I formed part of the original complaint and there’s nothing in NewDay’s final response letter about closing the account.

Because this point wasn’t part of the original complaint, our service won’t be able to consider it until NewDay have had a chance to investigate the problem themselves. Ms I will need to make a separate complaint about this to NewDay and If Ms I remains unsatisfied with NewDay’s response, she can bring her complaint to our service. I hope that this can be

resolved for both parties without this needing to happen though.

### **Putting things right**

As I think it's more likely than not that Ms I didn't make the transactions she's disputed, I'm going to tell NewDay to refund the disputed transactions, ensure that any charges or interest added as a result of these payments are also refunded and pay an additional £50 for the stress and upset caused. NewDay should also pay 8% interest (simple) related to the repayment of the disputed transactions to compensate Ms I for the loss of use of the money.

### **My final decision**

I require NewDay Ltd trading as Debenhams to:

- refund the outstanding disputed transactions totalling £94.49.
- Refund any additional charges or interest added as a result of these payments.
- Pay 8% simple interest from the date of payments onto the account related to the disputed transactions to the date when repaid.
- Pay an additional £50 compensation for the stress and upset caused to Ms I.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms I to accept or reject my decision before 30 September 2021.

David Perry  
**Ombudsman**