

## **The complaint**

Mr L complains about the actions of NewDay Ltd when he was tricked into making payments on his credit card as a result of a scam.

## **What happened**

In 2015 Mr L came across a merchant I'll refer to as 'A'. At A's request Mr L made fifteen payments from his NewDay credit card (but to different merchants than A), from October 2016 to May 2017, for a total of £4,444.95.

After initially seeing his portfolio increase Mr L asked to withdraw some funds - but A refused. After doing some additional research on A, he realised he had fallen victim to a scam. He contacted NewDay in 2020 but it said he hadn't raised a claim for a chargeback in time. It did offer to refund him £120 for one transaction but NewDay then said this was offered by mistake. Mr L remained unhappy, so he brought his complaint to this service.

Our investigator didn't think the complaint should be upheld. She said NewDay hadn't treated Mr L unfairly when it didn't raise chargeback claims for him because there was no reasonable prospect of success due to the claim being raised too late. And because the payments weren't sent directly to A this broke the necessary debtor-creditor-supplier chain to make a successful S.75 claim. She added that she didn't think the transactions were unusual so NewDay didn't treat Mr L unfairly when allowing them to be sent.

Mr L disagreed and has asked for an Ombudsman's review. He said that he was clearly the victim of a sophisticated scam and NewDay had seriously failed in its responsibility to protect him from financial harm. He said that at the time of the scam he was in a very vulnerable situation and emotional/psychological state which was exploited by the scam companies.

## **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've reached the same conclusion as our investigator. And for largely the same reasons. I'm sorry to hear that Mr L has been the victim of a cruel scam. I know he feels strongly about this complaint and this will come as a disappointment to him, so I'll explain why.

I've read and considered the whole file. But I'll concentrate my comments on what I think is relevant. If I don't mention any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is a fair and reasonable outcome.

I've firstly considered whether NewDay should've done more to stop all the payments Mr L made towards this scam. It is common ground that Mr L authorised the scam payments totalling around £4,444. I accept that these were authorised payments even though Mr L was the victim of a scam. So, although it wasn't his intention to pay money to the scammers,

under the Payment Services Regulations 2017 (PSRs) and the terms of his account, Mr L is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for NewDay to take additional steps or make additional checks before processing a payment in order to help protect customers from the possibility of financial harm from fraud.

So, I have looked into what this means for this case and whether NewDay should have done more here to prevent the payments in dispute.

Here, Mr L sent various payments over a matter of months to various merchants. The payments were for relatively small amounts, ranging from £82 to £500. And because the payments were made over a period of time, they created a pattern of spending on Mr L's account that wouldn't have seemed unusual. So, I don't think the payments were so unusual that NewDay should've stopped them and asked further questions of Mr L. Because of this, I don't think NewDay missed an opportunity to prevent the fraud from taking place.

### *Chargeback and S.75*

The chargeback process is voluntary and run by the card scheme whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed or be deemed a 'valid claim'.

Our role in such cases is not to second-guess the card scheme rules, but to determine whether the regulated card issuer (i.e. NewDay) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of Mr L.

Here Mr L raised the claim more than 120 days after the transactions were sent which means he was out of time under Mastercard's rules, to make a chargeback.

Unfortunately, Mr L didn't pay A directly. And as the investigator mentioned, one of the requirements to bring a successful S.75 claim is a debtor-creditor-supplier agreement. But because I can't see any evidence that link any of the merchants Mr L paid to A I think the required debtor-creditor-supplier chain is broken.

As a result, NewDay didn't treat Mr L unfairly by not raising a chargeback or S.75 claim.

I note Mr L's mentioned his personal circumstances and health made him vulnerable at the time. I appreciate Mr L was going through a difficult period with his health. However, I've not seen any evidence that NewDay was aware of this at the time of the scam and should've therefore acted differently.

I'm sorry to hear Mr L has been a victim in this way, but I don't think NewDay are responsible for his loss and so I can't fairly ask them to do more.

### **My final decision**

My final decision is that 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 August 2022.

Mark Dobson  
**Ombudsman**