

The complaint

Mr G complains that NewDay Ltd trading as Aqua is holding him responsible for an account that he didn't open.

What happened

Mr G says that he received a letter in January 2020 from debt collectors about borrowing of £976 on an account in his name with NewDay. He says that he had moved out of the address that was given when the account was opened. And that someone else must have used his details and he knows nothing about this account. He has since left this country.

NewDay said that it was holding Mr G responsible. It said that a credit search showed that information about other active accounts for Mr G matched to the details it held. It had reported a default relating to this account and wouldn't be removing it.

Our investigator recommended that the complaint be upheld, that Mr G not be held responsible for the account and borrowing and that all reference to his debt be removed from third party records.

She said that she had contacted a different financial business about a bank account also opened in Mr G's name at this time. The details held for him matched those NewDay had. This account had only ever received cash credits. One payment for £100 had been made from this account in July 2019 to the NewDay account. A direct debit to NewDay had been set up then, but all attempts to collect the direct debit had been returned unpaid. Mr G didn't recognise this account either and she said it was likely that it was used to disguise the fraudulent opening of the NewDay account. As he was out of the country she could understand why he hadn't taken any further action about this account.

Mr G explained that he had a genuine bank account with a completely different financial business at the time of the disputed payments. He had provided statements for this showing a credit for what seemed to be his salary. And a refund from a council which tied to evidence he'd provided of him moving out of his previous address on 8 April 2019. The email address and mobile number for his genuine account differed to those for him held by NewDay. And the account with NewDay was opened in May 2019 after he'd moved.

NewDay didn't agree. It said it had contacted the financial business holding the account from which the direct debits were attempted. It had said that the balance on that account was repaid on 14 September 2021 and closure requested. NewDay said that no fraudster would pay an outstanding balance and request closure. Even after Mr G had found out about this account he had taken no action.

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 can see that our investigator had asked NewDay for all the application details for the

account. And I understand that it relied for the identification of Mr G on the details of the bank account which Mr G accepts is his. But as our investigator has said his email and phone details didn't match to those on his genuine account. I've looked at what Mr G provided about him moving address including contact with the council. I'm satisfied based on the evidence provided by Mr G that he left the address involved before the NewDay account application.

I've looked at the statements on the NewDay account. Payments started in May 2019 after a card was activated on 21 May 2019. Statements then gave the old address details for Mr G. In July 2019 NewDay suspended the account as no repayments had been made. On 17 July 2019 a credit for £100 was made and a direct debit set up. This allowed the account to be used again and payments made taking the account over its limit. As set out none of the direct debits that were requested were paid. The account defaulted and was passed to debt collectors. Mr G first got in touch about the account in February 2020.

NewDay wants me to make inferences about the bank account with the direct debit mandate. Its position is that this is a genuine account. And because the details match to those it has for Mr G and a payment was made from it then the NewDay account was genuine too. It hasn't provided evidence to support what it says about it being closed and an unspecified balance repaid. And I think that I can reasonably expect it to demonstrate that this isn't a case of identity theft for Mr G primarily based on its own evidence and the account opening process.

I'm not satisfied from the evidence provided that NewDay has established that it is *most likely* it had an application from the genuine Mr G at the time the account was opened. I think that a third party could have obtained his details after he moved. I take into account that there are no copies of any identification documents received at the time provided here. And NewDay's checks didn't identify that the address was no longer current for Mr G and there are discrepancies to the information held for his genuine bank account. I also consider that the payments from the other bank account that Mr G says he doesn't recognise are consistent with the continued fraudulent operation of the NewDay account. And I'm not going to be able to resolve in a complaint about NewDay who, if that's right, might quite recently have repaid an unspecified balance on that account and why. And I won't also fairly draw any adverse inference from it being said that Mr G didn't contact that other bank before now especially as he has been abroad and didn't have any other details about it. The position for the NewDay account is that Mr G hasn't repaid it as he says it isn't his account. And I find on balance he isn't responsible for it.

Putting things right

NewDay says that it has already written off the debt and isn't looking to collect it. As it found that this was Mr G's debt it removed protective markers from CIFAS, the national fraud database. But it has reported details of the account and the default including to credit reference agencies. I agree with the resolution of the investigator and which is that all reference to this debt linked to Mr G should be removed and for the avoidance of doubt that Mr G be deemed not responsible for it.

My final decision

My decision is that I uphold this complaint and I require NewDay Ltd trading as Aqua:

- 1) Not to pursue or hold Mr G liable for this account or any balance.
- 2) To remove the reporting of this debt and a related default from any third parties including credit reference agencies.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 18 November 2021.

Michael Crewe
Ombudsman