

## The complaint

Miss K complains that NewDay Ltd has registered a marker at CIFAS the national fraud database.

## What happened

Miss K says that she had financial problems in 2016 and asked a family member to deal with her credit card. She was providing care for another relative and living on a temporary basis at a different address. She didn't see a letter asking about the source of a credit to her account. And she didn't know that the CIFAS marker has been added. Her employer has now found out about the marker and her job is at risk.

NewDay said it had added the marker because it had received a chargeback request on 6 April 2016. This was for a payment of just over £96 that had been received into Miss K's account on 1 February 2016. It had written to Miss K about this but not received any reply. The money had been spent and when the payment was reversed this took the account over the limit. It said Miss K had received and used fraudulently obtained funds and so it had grounds for the marker.

Our investigator said that there was a high bar for adding a CIFAS marker. She said that Miss K had given an explanation for what happened. And that it was highly likely a family member had been involved with this payment. NewDay had limited information now about the chargeback. Miss K would have been negligent in giving her card to a family member. But our investigator said that even so there wasn't sufficient information now for the marker to remain.

NewDay didn't agree. It said that the card should have remained in Miss K's possession and the account information be kept up to date. It said it couldn't assume that the use of the card was by a family member. It disagreed that more information was required about the chargeback given it was clearly relating to fraud. The account hadn't been repaid in full until later on in May 2016. And all the information had led it to conclude that the marker was justified.

## 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 need to consider whether the report to CIFAS was made fairly. On this point, NewDay needs to have more than a suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted and that the evidence would support this being reported to the authorities. I won't be able to say *exactly* what happened and I'll be thinking about what is *most likely*.

I've looked at the evidence NewDay has supplied to this service and at the subject access request response it provided to Miss K. I note that in relation to this payment there is a case

note from 12 May 2016 in which it was said that there were some issues with this type of chargeback and so proof had been requested. The notes said that this may well involve a family member or there is some other explanation as Miss K was continuing to make payments. It then noted that this didn't appear to be a normal first party fraud pattern.

From other case notes I can see NewDay established that the name and address of the card holder making the payment had no connection to Miss K's address. NewDay has provided information which is not about Miss K and which it has taken into account. I can't disclose third party information here but in view of my findings Miss K is not disadvantaged by this. NewDay also states that another payment made by a third party to the account was a genuine one. It accepts that it doesn't have the reconciliations about the payment from 2016 as these were dealt with by a different business.

I consider Miss K has given a plausible explanation for what happened. And for why she asked someone she trusted to manage the account. She should have kept her account details up to date and was responsible if a request for information wasn't dealt with. But I find it most likely she relied on this family member.

As I've set out above, in May 2016 NewDay had some questions about whether this was fraud by Miss K or not. There is clear evidence of at least one legitimate payment by a third party into her account on her behalf. And there is the wider information which doesn't specifically relate to Miss K and which for this reason in my view raises doubt over how involved she was. While technically she is responsible for what happened to the account I'm thinking about whether I've grounds to think that she reasonably knew why a payment had been reversed. And although she ought to have given the required explanation at the time, now that she has I'm not persuaded that the high bar for registering a marker has been reached taking into account all the information that is available from NewDay.

### **Putting things right**

In light of my findings I'm going to require NewDay to remove the CIFAS marker. I appreciate the potential consequences of the marker for Miss K, but I think that these were avoidable had she paid closer attention to the account at the time and responded to the request. So, I won't be asking NewDay to do anything more than remove the marker.

### **My final decision**

My decision is that I uphold this complaint and require NewDay Ltd to remove the CIFAS marker it recorded against Miss K.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 17 January 2022.

Michael Crewe  
**Ombudsman**