

The complaint

Mr T complains that NewDay Ltd failed to refund transactions he didn't recognise on his credit card account.

What happened

Mr T noticed two transactions totalling £7,800 he didn't recognise on his credit card statement. Mr T said he approached the merchant, an online investment company who I'll refer to as V about them. Mr T paid the full balance of his credit card statement, including the two disputed transactions the following month. A few weeks later he then notified NewDay about the unrecognised transactions. Mr T said he didn't realise he could approach his credit card supplier, which is why it took so long to notify them about the transactions.

Mr T asked why there was no warning sent to him before the payments went through and NewDay couldn't explain this to Mr T. They later told our service that their systems monitor transactions for fraud and scams. If there's enough information for their systems to analyse and it can determine the payment is authentic, then no warning would be produced.

NewDay used the chargeback system to challenge the transactions with V and asked Mr T to sign and return a declaration to support it, which they never received. Mr T told us that he was never sent anything, although NewDay provided copies of the letters sent to Mr T's home address. NewDay hadn't received the signed declaration from Mr T, but they attempted to use the chargeback system to challenge the two transactions on Mr T's behalf.

Initially, V rejected them because they didn't contain the correct declaration, but they later sent evidence to NewDay about the account they believed Mr T had opened with them. V provided documents showing the information they held for Mr T which matched NewDay's, apart from an email address. The email address held by V was similar to a company that Mr T had previously been a Director of, although Mr T denied having anything to do with the email address.

Because V had been able to satisfy the chargeback rules by showing that the details they held matched Mr T and NewDay were able to show the payment came from Mr T's credit card, they held him responsible. NewDay said that Mr T failed to return the declaration and also failed to send them evidence that he'd approached V, as he'd earlier said.

During the process, the full amount of the transactions was taken off the account and then only one was added back in, which made the outstanding balance owed by Mr T as £6,945.75.

Mr T complained about how he'd been dealt with and the lack of additional fraud prevention steps NewDay had implemented for both the disputed transactions. NewDay didn't accept that they'd done anything wrong and unhappy with their response, Mr T brought his complaint to our service for an independent review.

Mr T said that anyone could have obtained his details and opened an account with V. He went on to say that if NewDay had sent him a message before the payments were made, he

would have been able to deal with the issue at the time. He also said the transactions were unusual because he hadn't used the card for a couple of years.

It was looked into by one of our investigators and they thought that it was reasonable for NewDay to hold Mr T responsible for the transactions. They thought Mr T's reasons for delaying notification to NewDay were an unlikely explanation and questioned why someone would pay the full amount of the disputed transactions without notifying the company. She thought this would leave the account exposed to further disputed transactions. It was also concluded that it didn't make sense for someone other than Mr T to have made the transactions because any profit from trading would only come back to Mr T's credit card.

Mr T rejected the outcome and wanted further points to be taken into consideration. That V hadn't carried out proper checks before opening the account and it was possible for an account holder with V to use crypto currency to take profits, rather than return them to the account holder.

The complaint has now been passed to me and I issued a provisional decision where I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The relevant law surrounding authorisations are the Payment Service Regulations 2017 and the Consumer Credit Act 1974. The basic position is that NewDay can hold Mr T liable for the disputed payments if the evidence suggests that it's more likely than not that he made them or authorised them.

Authorisation is made up of two parts. Authentication and consent. Authentication is usually referred to as the technical evidence and in this case, NewDay have supplied evidence that shows the card details were used to make two transactions with V. I'm satisfied the evidence shows the disputed transactions were authenticated.

Consent refers to the way in which NewDay and Mr T agreed to operate the account to allow NewDay to make payments on Mr T's behalf. For example, NewDay's terms and conditions say, "The credit is available by using your card and PIN or signature, or other details including your card number".

So, because the correct card details were used - I'm satisfied that consent was given and the disputed transaction was authorised. But, there are exceptions where it wouldn't be appropriate for NewDay to hold Mr T responsible, for example if his credit card details were used without his permission.

Mr T has argued that his details could have been used by anyone to set up the account with V. Whilst that's true, whoever set up the account would still need specific information about Mr T in order to satisfy the account opening requirements for an investment business such as V, which included checking this information with a business specialising in identity confirmation – which were successful. The payment details from Mr T's card would also be needed, including the security code number on the card. At the time of these transactions, Mr T's credit limit was £8,000. The two disputed transactions amounted to just over £7,800, leaving less than £200 available balance. So, it appears that whoever was using the card, also knew what the available credit was because the two transactions didn't exceed the credit limit.

V told NewDay that Mr T had opened an account with them and made four deposits, two from his NewDay card and two from another credit card. These four transactions took place over the period of a week. Further enquiries were carried out with the credit card company

who confirmed that Mr T had received refunds from V after making a claim. I've thought about how V have made a refund to Mr T from transactions from one credit card but have defended the payments made from the NewDay card and what that means in Mr T's complaint against NewDay. Mr T has disputed making these transactions and the complaint relates to whether it's fair and reasonable for Mr T to be held liable for them by NewDay, or if it's more likely than not that he wasn't responsible for making them. So, whilst I've taken the actions of V into consideration, my overall role is to decide the complaint against NewDay.

V were asked how they make their payments to account holders and confirmed they would only make payments back to the source that they came from, so either of Mr T's credit cards. I appreciate that Mr T has said it's possible to arrange a crypto currency account to receive the payments, but that's not what V told us happened to any payments. V confirmed that Mr T made one withdrawal back to the source of the funding. V stated that they'd attempted to contact Mr T about some of his transactions, but he wasn't cooperative, and the account was blocked.

V had recorded a different email address for Mr T. He's said it has nothing to do with him and NewDay believed it was associated to him because of a previous business interest. Mr T said he's had nothing to do with this business for some years and has no connection to this email address. Whilst I can't be certain who owns the email address, there are similarities in the way the email address has been created to the name of the former business.

When I've considered all the evidence related to the transactions and the information provided by V, it seems unlikely that an unknown third party would be able to acquire all the information needed about Mr T, including the credit card details from two different accounts. I've also thought about why an unknown third party would go to the trouble of stealing Mr T's details in order to invest it for him because any profit from the account would go back to the source.

The risk to someone using Mr T's funds for this purpose was that Mr T would notice these payments before any profit could be taken, and if someone had all this information about Mr T, there are other easier ways to steal the money. The opening of an investment account isn't a typical way for someone to use stolen card details.

Mr T explained that he hadn't approached NewDay about the unrecognised transactions and had gone straight to V about them. He said he wasn't aware that he could go to NewDay about them until he was advised to by a friend, some two months after the disputed transactions were made. Whilst I understand that Mr T would approach V, I'm not sure why he didn't go to NewDay sooner, as they were the ones who supplied the money and would be the ones who would be responsible for any issues with the payment. Delaying any notification to NewDay left his account open to further exploitation and delayed the investigation of the transactions.

Mr T paid the full outstanding balance on his credit card, which was made up primarily of the disputed transactions. He did this a few weeks before notifying NewDay about them. I appreciate Mr T said he was doing this to avoid problems with his credit score, but at that stage he's claimed he didn't recognise them, so I'm unsure why he would repay the full balance without first raising it with NewDay.

There was then a gap of about two weeks when Mr T's available balance was back to £8,000 before he notified NewDay. This gave a further opportunity for any unauthorised third party to spend the full credit balance again, but there's no record of any further attempts to use these funds. I think it's likely there would have been other attempts if an unauthorised third party was responsible for the original disputed transactions, because it's apparent from

the amount spent – whoever made them knew what the available balance was.

Mr T has also complained that he didn't get a fraud notification from NewDay when the transactions were made. NewDay explained that if their systems have enough information to be satisfied the transaction is legitimate, and there's enough available credit, it will allow the payment to go through. But, because I've made a finding that I think Mr T was more likely than not responsible for the payments, it follows that he would have been aware of the transactions and any additional information supplied by NewDay wouldn't have changed the situation.

Taking everything into account, and whilst I'm sure Mr T will disagree with me, I think it's more likely than not that Mr T authorised these transactions and it's reasonable for NewDay to hold him liable for them. My current thinking is that I'm minded not to uphold this complaint.

I invited Mr T and NewDay to give me any more evidence and information they wanted me to consider before issuing my final decision. NewDay didn't have anything further they wanted to add, and Mr T responded with the following points:

- He raised concerns with the account opening procedures of V.
- Mr T wanted to know what details were checked by V when they set the account up.
- That personal and credit card details can be obtained by anyone from a wallet left on a desk in order to use them without his knowledge.
- That NewDay's procedure for checking payments wasn't appropriate.

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've already considered the points Mr T referred to about V's procedures and how NewDay dealt with the payments in my provisional decision so see no need to repeat them here.

Mr T has suggested that anyone could've obtained his details from information he left on a desk, including his name, address and credit card details. The checks carried out by V used his personal details, including name, date of birth and address – which could of course be obtained from this information Mr T says he left on his desk. Whilst I acknowledge this is a possible explanation for how the account was created with V, I don't think it's the likely explanation.

When the account was created by V, Mr T's correct mobile phone number was entered. I don't think this is something an unknown third party would be likely to do. I say that because any queries about the account or payments made to V would go to the contact details they held, in this case the mobile phone number for Mr T. An unknown third party wouldn't know if the account was compromised and it seems an unnecessary risk for someone to take when it would be simpler to put their own mobile phone number into the account and be able to maintain the illusion that they were impersonating Mr T.

There are other factors which I've considered in relation to the disputed transactions, including:

- Mr T fully paid off the balance before reporting it to NewDay and delayed the notification of the unrecognised transactions by a couple of weeks. I appreciate Mr T says he didn't realise he could go to NewDay, but I don't think someone who saw

almost £8,000 charges on their credit card would delay speaking with the company who operated the card.

- The payments to V that indicated the user knew the available balance and it's unlikely that an unknown third party could know the current balance. That's because the spending on the card isn't recorded on a statement until the following month and there's no indication of unauthorised access to Mr T's account for a more real time understanding of the balance.
- The lack of additional attempts to use the card when the balance was fully available. Mr T cleared the account which meant the full balance was again available- but no further use of the card was reported. If an unauthorised third party had access to the card, I would have expected to see it being used until it was blocked – but that didn't happen here.
- V would only return any profits to the card that was used to fund them. There are much easier ways for an unknown third party to exploit the card details than investing funds that can only come back to the card they came from. It was highly likely that Mr T would notice the payments from his account as soon as he saw his statement, which in fact was the case here, so if an unknown third party was responsible, the fraud couldn't be expected to last for long and the risk to them far outweighs any reward – and they probably wouldn't be able to access any profits.

So, whilst I appreciate Mr T's additional comments, I'm not intending to change my provisional decision. An objective review of the evidence leads me to conclude that it was more likely than not that Mr T was responsible for making the payments to V and it's reasonable for NewDay to hold him liable for them.

My final decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 18 February 2022.

David Perry
Ombudsman