

The complaint

Ms A complained because NewDay Ltd refused to refund her for transactions which she said she didn't authorise.

What happened

On 8 April 2020, Ms A rang NewDay. She said she hadn't used her card for five months, since she'd transferred a balance from her NewDay card to another card provider. She said she'd seen a debit on her March statement, which didn't say exactly what company it was or what it was for.

The adviser explained that the £15 payments were for a subscription company which dealt with cashbacks. And the payments had first been debited from Ms A's account in March 2018. The adviser explained to Ms A that sometimes a pop-up box appeared when making transactions online. She asked whether Ms A had clicked on anything like that. Ms A said it was possible. But she was very angry and shouted, asking what had she bought. She said she hadn't had anything from the company so it was a fraud. The adviser asked again whether Ms A had set up a subscription and Ms A said that if she had done, she hadn't had any contact from the company.

The adviser said she'd refer it to the fraud team, and cancelled Ms A's card and reissued her with another one. She asked whether Ms A still had her card, which she did. Ms A also confirmed that no-one else could have used her card.

Ms A rang again to follow up the call on 21 May. She complained.

NewDay's fraud team completed its investigation and tried to ring her on 3 and 4 June. As it couldn't get through, it wrote asking Ms A to get in touch.

On 25 June, Ms A sent a long complaint letter, and the fraud team tried again to ring her, but couldn't. NewDay sent its final response to her complaint on 27 July. In that, NewDay explained that the £15 monthly debits had started on 17 March 2018, and when Ms A made a purchase, she'd have been offered discounts and vouchers, and if she'd selected these, she'd have been signed up to the subscription automatically. NewDay also said that it had added the company to a stop list when she'd first notified it, on 8 April.

NewDay apologised because when she'd phoned in May, she'd wrongly been told that the outcome had already been communicated. It paid Ms A £60 compensation.

Ms A wasn't satisfied and contacted this service. She sent us a long and detailed letter. Her complaint points included:

- Further payments had been made in April and May 2020 even though she'd phoned on 8 April;
- Ms A said she'd phoned NewDay a number of times in early June but there had been a bad connection and her complaint points hadn't been dealt with. She also hadn't

- received a call back;
- Ms A said that NewDay's 27 July letter had offered her £60 for poor communication, but her substantive complaint was still outstanding. And when she'd received a further letter on 11 August, she believed there hadn't been any genuine investigation into her complaint;
 - In a section of our complaint form, Ms A mentioned that she was categorised as vulnerable for Covid, and she'd had to deal with this during that lockdown.

Our investigator asked Ms A for more information about her vulnerability. She provided details, which the investigator referred to NewDay for consideration. NewDay replied that Ms A hadn't mentioned her health conditions in any of her letters. And although she'd mentioned health in one of the phone calls, she hadn't said she was experiencing financial difficulties. Nor was there any evidence that her vulnerability had affected her understanding of her statements. So NewDay said that knowing Ms A's circumstances didn't change its decision about the disputed transactions.

Our investigator said she thought it was most likely that Ms A did click on the pop-up advert for the subscription. But she didn't think Ms A realised she was signing up for a monthly subscription. She didn't think it would be fair for Ms A to be liable for the ongoing payments apart from the first one. So she thought NewDay should refund all the payments from the second one onwards.

Ms A didn't accept the investigator's view. She said she hadn't admitted to NewDay that she might have clicked on a link. She said she'd asked NewDay to prove she had done so.

My provisional findings

I issued a provisional decision on this complaint. Before doing so, I considered all the available evidence and arguments to decide what would be fair and reasonable in the circumstances of this complaint.

Regulations

There are regulations which govern disputed transactions. The relevant regulations for disputed transactions which took place at the dates in Ms A's complaint are the Payment Services Regulations 2017. In general terms, these say that the bank is liable if the customer didn't authorise the payments, and the customer is liable if he did authorise them.

Did Ms A authorise the debits?

In my provisional decision, I explained that I'd listened carefully to the call recording from 8 April 2020, when Ms A first disputed the debits going back to March 2018. As I've set out above, in that call, NewDay's adviser explained to Ms A that sometimes a pop-up box appeared when making transactions online. She asked whether Ms A had clicked on anything like that. Ms A said it was possible.

Ms A subsequently denied this. I asked her for more information about what she could remember about what she signed up for, reminding her that in the phone call she'd told NewDay that it was possible she'd clicked something. I asked her what she might have clicked and whether she could remember whether there were any other steps. But Ms A replied that she'd never admitted or said that she'd clicked on anything.

This isn't what the call recording shows though. As I've mentioned already, Ms A admitted to NewDay when she first reported the transaction that it's possible that she could have clicked

something. I thought that was quite persuasive, and so I was satisfied that it was more likely than not that she did click the pop up and consent to an initial payment.

The question then became whether Ms A consented to the payments that followed. The Office of Fair Trading issued guidance on payments like these in 2012 – and the Financial Conduct Authority says that this guidance still applied. Broadly speaking, this says that a merchant (in this case the company behind the payments) should have made it clear to a customer that they would be agreeing to a continuous payment authority.

Unfortunately, I wasn't able to see the wording of the pop up box Ms A saw and nor did I see what she may have seen after she clicked this. It wasn't Ms A's fault that she can't provide this – but nor was it NewDay's, and this service had also tried contacting the company without success. That means that I had to rely on the information I do have, to decide what's more likely than not to have happened here.

One thing that stands out here is that Ms A let these payments go on for two years. That might suggest that she was happy for them to be made. So, to be fair to Ms A, I asked her why she'd taken so long to query the monthly £15 debits. They'd started in March 2018, and she didn't contact NewDay about them until April 2020.

In reply to my questions about why she'd taken so long to query the debits, Ms A replied that:

- She'd never signed up for the debits;
- The Covid pandemic had had a huge negative impact on her, because she had long-term health challenges and disability;
- She'd only noticed the debits after paying off the balance of her credit card, and she was still getting statements. She said she then immediately contacted NewDay.

I looked at Ms A's statements. On 24 October 2019, Ms A paid off £3,410.67 towards her statement balance, leaving a £15 debit balance. She didn't contact NewDay until some six months later. So I couldn't see there was any link between when she did a balance transfer and when she reported the dispute about the £15 monthly payments.

I also noted that Ms A had been sent monthly statements, which showed the monthly £15 debits from March 2018.

So I wasn't persuaded that the reason Ms A didn't query the debits was that she didn't know about them. Nor did I accept that she contacted NewDay as soon as she'd paid a large sum off her balance – because the statements show otherwise. And in order to have paid a large sum off her balance in October 2019, she'd have had to have been monitoring her statements to know how much she owed. I found it most likely here that Ms A knew about the monthly debits after the first debit in March 2018. And if she hadn't authorized them – then I think it's fair to say that she should have raised this with NewDay at this point.

I'm sorry to hear that Ms A has health issues. But the £15 debits started in March 2018 and Covid didn't start to impact the UK significantly until spring 2020. So, in line with the above, I still thought that Ms A could have been aware of these debits before this time.

And the information which Ms A sent to us about her health condition didn't indicate that it made her incapable of managing her account – which she seemed to have done during the relevant times these payments were made. If that had unfortunately been the case, I'd have expected it to have been reported to NewDay, but there's no evidence of that.

The statements also showed that there weren't any ongoing £15 debits in April and May 2020, as Ms A had complained. I accepted that NewDay cancelled them as soon as Ms A contacted it about them.

Taking into account the facts that:

- Ms A didn't query the £15 monthly debits, which started in March 2018, until April 2020, and hadn't provided a sound reason for that;
- on the first call recording to NewDay she said it was possible she'd clicked on something; and
- I don't accept that the Covid pandemic which started to impact the UK significantly in spring 2020, could have been why Ms A didn't query the debits in March 2018,

I considered it was most likely that Ms A did click on the pop-up advert for the subscription, and that she was aware of and understood what she'd signed up for on an ongoing basis. So my provisional decision was that I do not intend to uphold this complaint.

Responses to my provisional decision

Ms A didn't reply to my provisional decision.

NewDay said it had nothing to add.

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 also taken into account responses to the provisional decision. Having done so, I consider my provisional decision was fair and reasonable in all the circumstances of this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 28 February 2022.

Belinda Knight
Ombudsman