

The complaint

Mr C complained because NewDay Ltd refused to refund him for transactions which he said he didn't authorise.

What happened

On the morning of 7 April 2019, Mr C checked his NewDay account and saw that three payments, with associated non-sterling fees, had debited his NewDay card overnight. They were for digital content with an online company, and the total was £192.84. Mr C hadn't made the transactions so he rang NewDay straightaway.

NewDay stopped the card and issued another, and put temporary credits on Mr C's account while it investigated.

On 15 May NewDay raised a chargeback with the merchant. A chargeback is a process for resolving settlement disputes. The merchant defended the chargeback, providing Mr C's name, address, email address and other details. These matched what NewDay had on Mr C's records.

NewDay refused Mr C's fraud claim, but it didn't tell him that it had held him liable. On 2 August it re-debited the temporary credits. This took Mr C's account over his credit limit, so NewDay charged him a £12 over-limit fee.

NewDay did notify Mr C of that fee, sending a letter headed "Notice of Default sums." When he received this, Mr C rang to find out what was happening, and he complained to NewDay. He explained that he had an account with the online company but wasn't aware he had a specific account with the similarly named app store to which the transactions had been made. His account with the online company had been hacked earlier in the year, and there had been fraudulent transactions against both the cards he'd had stored with that organisation – the NewDay card, and a card with another card provider. The other card provider's systems had picked up the pending debits as fraudulent, and had blocked them instead of debiting Mr C's account.

In its final response to Mr C's complaint, NewDay said it had correctly administered Mr C's account, though it removed the £12 over-limit fee. It said that the details which the merchant had provided about the transactions had matched the information which NewDay held about Mr C's account.

Mr C wasn't satisfied and complained to this service. He told our investigator that at the time of the transactions he lived alone, and no-one else would have had access to the electronic devices linked to his account with the online company. He said only his phone had been linked to that account, and he was sure the disputed transactions couldn't have been made through his phone because he always had it near him. He also told the investigator that he'd phoned NewDay as soon as he'd found out about the transactions. And although he'd offered NewDay evidence at the time that his account had been hacked, he no longer had this because it had been a long time ago.

Our investigator upheld Mr C's complaint. He pointed out that if Mr C's account with the online company had been accessed by an unauthorised third party, that person would have had access to all the contact and personal details on the account – such as name, email and address. So the investigator didn't think the fact that the disputed transactions included this information was evidence that Mr C had authorised them.

And the investigator also pointed out that the geographical area identified on the transactions wasn't right, and the disputed transactions weren't consistent with Mr C's previous spend. The statements NewDay had provided to us didn't show any purchases from the merchant. The purchases had been for mobile games – and there was no evidence Mr C bought this type of purchase.

So the investigator upheld Mr C's complaint, and recommended that NewDay should restore Mr C's account to the position it would have been in, if the disputed transactions hadn't happened.

NewDay didn't agree, and asked for an ombudsman's decision. It sent another copy of the online organisation's defence, which had said it believed the transactions had been genuine.

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

In my provisional decision, I explained that there are regulations which govern disputed transactions. The relevant regulations for disputed transactions taking place in April 2019 are the Payment Services Regulations 2017. These say that the payment service provider (here, NewDay) must show the transaction was authenticated. That's the technical part, and here, the electronic records show the three disputed transactions were authenticated.

The regulations also say that it's then necessary to look at whether the card holder authorised the payments. In general terms, both under the Payment Services Regulations and the Consumer Credit Act, the bank is liable if the customer didn't authorise the payments, and the customer is liable if he did authorise them. These payments were also "*distance contracts*," as these were phone transactions, which again means that customers aren't liable for any payments they didn't authorise.

So I carefully considered whether or not I thought it was more likely than not that Mr C authorised the disputed payments.

Is it likely that Mr C authorised the disputed transactions?

The statements I saw for Mr C's account didn't show any previous transactions to the merchant. Nor did I see any other transactions for the purchase of mobile games. This ties in with Mr C telling the investigator he didn't even know he had an account with the online app store.

Mr C also reported the overnight transactions promptly in the morning when he saw them. It's possible that someone might do this if they had authorised the transactions themselves, but taken with the other evidence, it's helpful. It's unfortunate that Mr C no longer has

evidence that his online account was hacked, but I said I did understand that the time that's passed makes this less likely.

The chargeback responses also list the geographical part of the country for the device used. But this was several hundred miles from where Mr C lived.

I also considered the pattern of the transactions. All three were carried out in succession, and there was then a fourth which failed. This was most probably because Mr C's NewDay balance was near the credit limit at the time of the disputed transactions. This pattern – quickly making repeated transactions until there's a rejection – is common for fraudulent transactions.

NewDay relied on the online organisation's defence of the chargeback, which was based on the fact that the transaction showed Mr C's name, email address, and address. But I agreed with the investigator that any fraudster who successfully hacked Mr C's online account would automatically have had access to this information.

It's rarely possible to establish for certain what happened. So I take my decision on what I think is more likely than not to have happened, taking into account all the circumstances of the case. Here, all the factors above led me to conclude that it wasn't likely that Mr C authorised the payments himself.

As I considered Mr C didn't authorise the disputed transactions, I found that NewDay should refund Mr C for the disputed amounts, and make related amendments to his account as set out below. I explained that as I was being more specific than the investigator's view about what this means in practice, I was issuing this as a provisional decision – so that both sides could comment on it, by the date set for responses, before a final decision.

Responses to my provisional decision

Mr C didn't make any further comments.

NewDay said that it didn't accept there had been fraud, but it was willing to refund Mr C as a gesture of goodwill.

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 reconsidered all the available evidence and arguments, and taking responses into account, I consider that my provisional decision was fair and reasonable in all the circumstances of this complaint.

My final decision

My final decision is that I uphold this complaint and I order NewDay Ltd to :

- refund Mr C for the disputed transactions and non-sterling transaction fees, totalling £192.84;
- refund any other fees, interest or charges which it has levied to Mr C's account as a result of these transactions;
- correct any adverse information which it sent to Mr C's credit file, and notify Mr C when this has been done, so he can check his credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 April 2022.

Belinda Knight
Ombudsman