

## **The complaint**

Mr E complains that NewDay Limited t/a Aqua (Aqua) declined to refund transactions on his account he said he didn't authorise.

## **What happened**

Between 26 and 28 January 2021, 5 payments were made on Mr E's Aqua credit card totalling £907.79 (including charges). Mr E told our service that he discovered the payments when he called Aqua to report his card as stolen. He says he didn't authorise the payments, which were made in Turkey, and asked Aqua to refund them.

He told Aqua he hadn't authorised anyone else to use his card, and provided Aqua with a copy of his Passport to show it had no stamps from Turkey, as well as travel guidance that he says showed only Turkish citizens could travel to Turkey at that time because of coronavirus restrictions.

However, Aqua rejected Mr E's complaint. It said that, contrary to what Mr E initially said, he had told Aqua he still had the card on 16 February 2022. And that he later said the card was in the pocket of a jacket he had thrown away. It said the card transactions were verified by chip and PIN and that his card can't have been cloned. It did award him £35 for poor customer service he had experienced, but it didn't agree to refund the disputed transactions.

Mr E brought his complaint to our service, but our investigator didn't uphold it. He noted a number of inconsistencies in Mr E's story and was ultimately satisfied Mr E had consented to the payments.

Mr E didn't agree. He reiterated that his passport hadn't been stamped and said that Turkey was a third world country, which meant it had to stamp passports. And that there were travel restrictions in Turkey, meaning it wasn't possible for him to go there. He also said he had completed a form confirming he understood he could be prosecuted if his claim was false, which he said was evidence of his honesty. And that Aqua had previously allowed a transaction he didn't authorise to debit his account, which he said was evidence Aqua had done this to him before.

Our investigator considered what Mr E had said, but it didn't change his view. So Mr E asked for an ombudsman to review the matter afresh.

## **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.

In simple terms, if I'm to uphold this complaint, I'd need to be persuaded that Mr E didn't authorise the transactions in question. That is to say that he didn't make the transactions himself, or give someone permission to make the transactions.

Aqua has provided evidence that shows the payments in question were made using Mr E's card and PIN. Which means that whoever made the transactions had to have Mr E's physical card and know his PIN.

Mr E has been inconsistent when explaining what happened to his card. Aqua says he first called to report his card stolen, then later said he still had his card, before saying he had thrown it away with an old jacket. Mr E told our service he had lost his wallet, including his Aqua card and 2 debit cards. He initially said there were no unauthorised transactions on his other cards, but he later reported one transaction (also in Turkey) on one of his debit cards as unauthorised.

Given Mr E's inconsistency, it's difficult to ascertain what happened to his card. And on the face of it, none of the scenarios Mr E has offered explain how his card would have ended up being used by a fraudster in Turkey.

Notwithstanding that, I've looked at the evidence relating to Mr E's PIN. Mr E told Aqua he hadn't told anyone his PIN, and that he hadn't used his card since he paid off the balance in September 2020, 5 months earlier. And he told our service he didn't have the PIN with the card.

In light of what Mr E told both our service and Aqua, I've seen no satisfactory explanation as to how anyone could have obtained Mr E's PIN. Much less the same person who could have obtained his physical card when it was either lost, stolen or discarded.

Even if Mr E's card and PIN had been compromised by the same person, the spending doesn't fit the usual pattern I would expect to see from a fraudster. Based on what Mr E has told us, his card can't have been used immediately upon it being compromised. Because he claims he wasn't in Turkey.

And it would be unusual for a fraudster to go to the trouble of stealing a card and PIN and taking it to a different country only to make infrequent transactions over the course of three days, and to stop using it over £2,500 shy of the credit limit.

Mr E also told our service that he only disputed one transaction on his other debit card. But I can see from the statements for that account that there were numerous transactions both before and after the Turkey payment that Mr E doesn't dispute. So, if the sole Turkey payment was made by a fraudster, that would mean the fraudster would have had to obtain and return Mr E's card and PIN without him knowing, after making just one payment (of only £69.99).

Given what I've said above, the evidence Mr E has submitted to suggest he wasn't in Turkey isn't relevant, because I'm satisfied the payments were either made by Mr E or by someone else with Mr E's consent. There are also a number of other issues with the evidence Mr E has submitted.

Absence of a stamp on a passport doesn't prove Mr E didn't travel to Turkey, and I've seen nothing to support Mr E's suggestion that Turkey would have been obliged to stamp his passport, had he been there. In fact it's common for countries (including Turkey) not to stamp passports when they're checked. And while Mr E has sought to suggest he wasn't in Turkey, he hasn't provided any evidence to show where he was on the relevant dates. And there's another payment on his account at an airport shortly before the transactions Mr E claims he didn't authorise.

I've reviewed the travel guidance Mr E provided but it doesn't give historic guidance, only current guidance. So I can't say with any certainty that non-Turkish citizens were banned

from entering Turkey at the time, and indeed Aqua has suggested entry simply required completion of an online form.

Mr E's reference to a previous duplicate transaction also isn't relevant. That a duplicate payment appeared on his statement previously isn't evidence that Mr E didn't authorise the payments he now disputes. And in any event, Mr E was refunded the duplicate payment he referred to.

Finally, I don't accept Mr E signing a form that said he could be prosecuted if he provided false information is evidence of Mr E's honesty. Given what I've said above about the inconsistencies in Mr E's story, and the contradiction between the evidence and what he has said, I don't find Mr E to be a credible witness. And in the circumstances of this case, signing the form Mr E has referred to is simply evidence he was aware of the consequences of lying, and chose to provide the evidence he did regardless.

For the reasons I've set out above, I'm not persuaded Mr E didn't authorise the transactions he disputes. So, it follows that I won't ask Aqua to refund Mr E.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 23 November 2022.

Alex Brooke-Smith  
**Ombudsman**