

The complaint

Mr L complains that NewDay Ltd failed to protect his account and initially held him liable for the debt caused by fraudulent transactions on his account. There was then a failure to properly administer the account for several months.

What happened

Mr L held a credit card with NewDay called "Fluid". The account was set up to take a direct debit payment from another bank account held by Mr L to pay towards the credit card on a monthly basis.

Mr L received a letter from his bank in February 2022 that the direct debit requested by NewDay had been returned because there were insufficient funds in his account. The direct debit was for £13,000. Mr L realised there was a problem as he didn't recognise this amount of spending on his account and his credit limit at the time was substantially less than £13,000.

Mr L contacted NewDay about the issue which they looked into for him. NewDay sent a letter to Mr L telling him that his account had been subject to fraud, and he wasn't responsible for the disputed transactions. Mr L denied ever receiving this letter.

Mr L's account had been manipulated by unknown third parties and notes from NewDay show that there were concerns about the account the previous month (January 2022), but it appears that no contact was made with Mr L at the time.

The account had been changed, including the address for correspondence and a number of NewDay's letters over the subsequent months were sent to various addresses unconnected with Mr L. There were also some letters and statements that were sent to Mr L at his registered address.

Mr L stated that he was told not to pay towards his outstanding balance on the account whilst the fraud investigation was taking place. NewDay later apologised for this and advised Mr L that he was required to pay towards his balance (the account had legitimate charges against it incurred by Mr L prior to the fraudulent transactions).

Mr L received requests for payment against the account that appeared to be incorrect and due to the advice he'd been given, the account wasn't maintained and the debt was sent out to a collection agency. Mr L was contacted on numerous occasions concerning the outstanding debt.

Mr L made a complaint to NewDay about the way they handled his account and the amounts he was being asked to repay. NewDay wrote to Mr L and accepted that they'd let him down, paying him £80 compensation and writing some charges and interest off related to the fraudulent funds/late payment.

Mr L remained unhappy and continued to ask NewDay about what had happened to allow his account to go over its limit by about three times his credit limit. Mr L also told NewDay

that the situation had left him, and his wife stressed. Mr L said he'd taken several hours on the phone and writing letters to try and get to the bottom of how his account was compromised.

Numerous letters were sent by Mr L and he received further responses from NewDay, addressing the points raised by him. NewDay provided a further £40 in compensation. NewDay issued a third and final response to Mr L (introducing the letter to a completely different person) turning down Mr L's remaining points.

Over the course of the complaint, NewDay corrected the outstanding debt to show the correct amount (removing various charges), provided third party notice to a fraud prevention service, updated their reporting to the credit reference agencies and paid Mr L £120 compensation.

Mr L was unsatisfied with NewDay's approach to his complaint and brought it to the Financial Ombudsman Service for an independent review where it was looked into by one of our investigators. Mr L wanted the outstanding debt written off and more compensation.

Information from both parties was received and considered before the investigator wrote his recommendations about the complaint. He thought that NewDay had caused Mr L continued stress and trouble through their handling of the complaint and recommended an additional payment to Mr L of £400 but didn't uphold Mr L's point about the outstanding debt.

NewDay thought the amount was too high and offered a further £150 payment to Mr L on the basis that they'd corrected their mistakes and reopened the account.

As no agreement could be reached, the complaint has now been passed to me for a decision.

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'm very aware that I've summarised this complaint above in far less detail than it may merit. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact the decision I'm making.

It's in agreement that Mr L was the victim of an account takeover, starting in December 2021. NewDay's notes show that they had some concerns about transactions and changes to the account in January 2022. As far as I'm aware, NewDay didn't raise this with Mr L at the time. The first time he became aware of it was in February 2022 when his own bank declined the direct debit for over £13,000.

I've no doubt that this came as a shock to Mr L because his credit limit at the time was substantially less than that. Once he notified NewDay about the issue, they wrote to him within a couple of weeks about it, although Mr L denied receiving that letter.

That letter told Mr L that they weren't holding him responsible for the disputed transactions but didn't give much detail about what was to happen next, apart from a listing with a fraud prevention service to aid in the ongoing protection of Mr L's finances.

Various letters and statements were sent out, but unfortunately to different addresses that appear to have been updated by whoever took over the account. Mr L also received requests for the outstanding balance that hadn't fully taken into the account the disputed transactions which caused NewDay to seek a large payment from him.

Mr L says he was told not to make payments towards his account whilst the investigation was ongoing, but this turned out to be incorrect advice because Mr L had legitimate payments charged to the account which he was required to repay as part of the agreement.

He's asked for this to be written off, but I won't be asking NewDay to do that as it wouldn't be fair or reasonable to ask them to take the loss themselves. That's because the outstanding debt is made up of transactions originally authorised by Mr L and not linked to the account takeover. He's required to repay those to NewDay, and I understand they've accepted Mr L can continue to make monthly payments against the debt.

From reading those letters addressed to Mr L's proper address, it's apparent that he was only sent information (apart from the fraud response) related to account statements and various defaults and the closure of his card. There wasn't much in the way of explanations about what had happened until the three complaint response letters were sent starting in April and ending in August 2022.

NewDay accepted that the wording of some of those letters could have been better. Overall here, the communication with Mr L was less than ideal, causing Mr L unnecessary stress in the way that they handled the issue. I accept that NewDay weren't responsible for the disputed transactions, but it appears they had some inkling of an issue in January but didn't follow up with their concerns, effectively allowing Mr L to be unaware of a problem with his account. NewDay told Mr L they would have taken the £13,000 payment if the funds were in his account – which would have been quite a shock. Fortunately that didn't happen, but having thought about how NewDay could have prevented some of the stress to Mr L, and their lack of care when dealing with the aftermath of the debt, I'm in agreement with the investigator's recommendations they pay a further £400 to Mr L.

I do recognise the positive aspects of NewDay's actions, including the writing of off any charges linked to the disputed transactions, updating the credit file for Mr L which shows no adverse information about him, lodging information with the fraud prevention service and paying Mr L an initial amount of compensation. But, I think they could have acted with more accuracy here and dealt with the problem sooner, rather than the extended months of worry and stress caused to Mr L by the incorrect information provided to him and NewDay's lack of care.

Putting things right

NewDay should now pay Mr L a further £400 for the unnecessary worry caused to him.

My final decision

My final decision is that I uphold this complaint and NewDay Ltd are instructed to settle it as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 24 May 2023.

David Perry

Ombudsman