

The complaint

Mr L complains that NewDay Ltd unfairly registered a fraud marker against him.

What happened

Mr L became aware that NewDay had registered a fraud marker against him with an organisation called CIFAS, who are a fraud prevention agency. Mr L denies any involvement with the circumstances linked to the marker which relates to the purchase of a laptop a few years ago.

The laptop was purchased using Mr L's NewDay card but used another payment processor to channel the payment. I'll refer to them as J.

When the laptop was purchased, the package was returned to the supplier without the laptop which had been replaced by a piece of wood. Mr L denied making the purchase himself and was given a refund.

At the time, NewDay communicated with the supplier to find out what had happened. The supplier believed Mr L had made the purchase himself and evidence at the time indicated Mr L had spoken on the phone to them about its delivery. Postal evidence showed it was delivered to Mr L's home address and signed for.

Based on the claim made by Mr L, NewDay believed he'd attempted to defraud them by claiming a refund and lodged the fraud marker.

Once Mr L became aware of the marker he attempted to get it removed and denied any involvement in the purchase of the laptop. He believed his account had been used by someone else to order it. NewDay declined to remove it and Mr L then brought this complaint to the Financial Ombudsman Service for an independent review.

It was looked into by one of our investigators who asked both parties for information concerning the complaint. Mr L explained what had happened and advised that since the marker had been in place, he'd had difficulty obtaining credit or opening bank accounts. Mr L said that at the time of the delivery, he knew nothing about it and returned the package without opening it. Mr L said he did not have an account with J, but from documents provided by him later it transpired he did have an account with them.

NewDay provided details of Mr L's account including summaries of the investigation carried out at the time. This included notes of a call provided by the merchant that NewDay believed was Mr L. NewDay also noted that Mr L had called them about a purchase using J a few days earlier, although Mr L later denied this was him. NewDay haven't been able to produce the original documents and call recordings they considered before lodging the marker.

After considering the information supplied by both parties, our investigator upheld Mr L's complaint because NewDay hadn't been able to produce the evidence they considered at the time. Our investigator also thought that NewDay should have contacted Mr L about the marker before they lodged it. It was recommended that the marker be removed and that

NewDay pay Mr L £150.

NewDay didn't respond to the investigator's report and Mr L disagreed with the compensation award and thought it should be increased. This was based on the difficulties he'd experienced obtaining other financial products whilst the marker was in place.

As an agreement couldn't be reached, the complaint has now been passed to me. 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.

Before a marker can be lodged with CIFAS, NewDay have to meet the appropriate standards, known as "pillars". The relevant ones here are:

- That there are reasonable grounds to believe that a Fraud or Financial Crime has been committed or attempted.*
- That the evidence must be clear, relevant and rigorous.*

Because the merchant advised NewDay about what had happened, and NewDay had been approached for a refund by Mr L, I'm satisfied this met the standards set out in the first "pillar".

Mr L's case was that his card details were used by someone else and he had nothing to do with either of the transactions made using J, nor did he call NewDay to release one of the payments.

NewDay's notes record that Mr L called them a few days before the disputed transaction because a payment had been identified by their fraud detection system. The notes refer to Mr L being identified which also used an additional layer of security (unspecified). The transaction was made using J and is specifically mentioned in the notes. The call handler was satisfied that Mr L was the genuine caller and released the payment.

The notes of a further conversation several days later show Mr L disputing that (and another) transaction made using J. The notes state that Mr L didn't use J and denied it was him calling them a few days earlier. One of the disputed transactions was refunded to Mr L by J and NewDay refunded the purchase of the laptop.

The merchant provided details of their interaction with the person they believed was Mr L, which included a phone call they received prior to the delivery. NewDay compared the calls and believed this was the same caller who'd passed security prior to the release of a payment to J.

Once NewDay looked further into the transaction related to the laptop, they were informed that it was purchased in Mr L's name and delivery was made to his home address at the time. It also used a "signed for" postal service. The delivery was returned to the merchant by Mr L who denied ordering it. When it was opened on return, all the box contained was a plank of wood. Mr L denied knowing what was in the box.

From this I think it's reasonable to assume that Mr L was using that address and at some point was in possession of the box – because he later returned it himself to the merchant. I've struggled to think of a plausible and likely reason how someone unknown to Mr L could obtain sufficient details about him to pass NewDay's security – including the additional details needed to release the payment.

Why would someone go to this trouble and then leave the box – presumably resealed for Mr L to return? It would have been much simpler and far less risky to just take the box with the laptop in it. Presumably, if it was ordered by someone other than Mr L, then they'd already obtained the laptop – so I can't think why they would then go the trouble and risk of discovery by packaging the box up with a plank of wood for Mr L to find and return to the supplier.

NewDay considered that their evidence showed Mr L had attempted to defraud them in relation to the transaction for the laptop by falsely claiming a loss. NewDay were unable to provide the original files to our service, so I haven't been able to objectively review their evidence in light of Mr L's complaint. But, they did supply their notes they made at the time which show NewDay carried out an investigation into the refund claim and were provided evidence from the merchant, including notes of a call from Mr L where he denied making the transaction. They assessed that this was enough to meet the standards laid down by CIFAS and I tend to agree.

But, NewDay are required to retain their evidence for the period the marker is in place and as they haven't been able to produce it, I think it's both fair and reasonable for them to now remove the marker. I'm not currently intending to make an award to Mr L as I think that NewDay met the standards required of them at the time.

I invited Mr L and NewDay to give me any more evidence and information they wanted me to consider before issuing my final decision. NewDay didn't respond and in summary Mr L added:

- He was happy that the marker was to be removed but remained unhappy that no compensation was recommended.
- He believed he was the victim of a postal scam related to the laptop.
- He believed NewDay were using the CIFAS system too easily without thought for their impact.
- He thought that at least nominal compensation should be awarded to influence the thinking of NewDay in future cases where CIFAS is relevant and encourage them to discuss the issue.

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 done so, and having considered Mr L's additional points, I see no reason to reach a different conclusion. So, this final decision confirms the findings set out in my provisional decision.

I appreciate Mr L believes that he was the victim of a scam related to the parcel, but the evidence assessed by NewDay at the time gave a different picture, which I've already considered.

When NewDay lodged the marker, they had to meet the standards laid down by CIFAS. I've discussed the level of evidence they obtained at the time and for the avoidance of doubt, I'm upholding the complaint based on NewDay's failure to keep those records they originally relied on and not because they didn't meet the standards at the time based on the notes they were able to produce.

Redress

We don't recommend the award of compensatory payments as a form of punishment for the business or to change their approach to future cases, only where the conduct of the business has impacted their customer through some failure to treat them fairly. Here I've not recommended the award of any redress because the failure by NewDay was in their record keeping and not the standards they achieved when they lodged the marker.

Putting things right

In order to settle this complaint, NewDay are required to remove the CIFAS marker they lodged against Mr L.

My final decision

My final decision is that I uphold this complaint against NewDay Ltd and they're instructed to remove the CIFAS marker they lodged against Mr L.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 13 February 2023.

David Perry
Ombudsman