

The complaint

Mr F complains NewDay Ltd trading as Aqua have refused to refund some transactions made on his credit card.

What happened

Mr F reported some transactions to NewDay he didn't recognise as having made himself. The transactions, including foreign transaction fees, totalled about £3,200. He later said he had made the transactions but had done so while intoxicated and couldn't afford to repay the balance. Mr F also said they were made to gambling companies abroad so he thinks because of this, and the amount involved, NewDay shouldn't have allowed the transactions to debit his account. NewDay didn't agree they were responsible for the transactions, so Mr F complained.

NewDay responded to Mr F's complaint. They said, although Mr F had initially said he didn't recognise the transactions, he'd later said they were made by him and that he'd received confirmation of the transactions from the merchants. They also found the transactions were made from the same device Mr F has registered with NewDay. So they didn't agree there was any evidence the transactions had been made fraudulently. NewDay said the transactions hadn't been processed by the merchants as gambling transactions so that's why they hadn't been declined by NewDay's systems.

Mr F referred his complaint to our service. An Investigator considered what had happened. She said, in summary, as Mr F authorised the transactions it wasn't unreasonable for NewDay to hold Mr F liable for them and apply interest and charges in line with the terms and conditions of the account. She also considered that these were gambling transactions made on a credit card – which is now not permitted in the UK. But said NewDay weren't aware the transactions were gambling transactions when they were processed because the merchant had used a different category code. So she didn't think they'd done anything wrong.

Mr F said he didn't accept the Investigator's findings but didn't say why. As Mr F didn't agree, the complaint's been passed to me to decide.

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.

The Payment Services Regulations 2017 say customers can be held liable for transactions on their account made or authorised by them. Mr F, despite initially saying he didn't think the transactions were made by him, now accepts that they were.

So I'm satisfied Mr F authorised the transactions and therefore NewDay are entitled to hold him liable for them, and apply interest and charges in line with the account terms and conditions.

Mr F says the transactions in question were for gambling. Gambling transactions are no longer allowed on credit card accounts in the UK. However, NewDay have said the merchant did not process these transactions as gambling transactions. The technical evidence they've provided shows they were processed by the merchant using a different category code, so NewDay wouldn't have known they were gambling transactions at the time they were made. Mr F also thinks NewDay shouldn't have allowed such a high amount of money to debit his account in such a short space of time. But NewDay have also provided evidence to show Mr F was asked to verify the transactions in their app and also by text message – which the records show he did. So I don't think NewDay made a mistake by allowing these transactions to debit Mr F's account.

Mr F has said he can't afford to repay what he spent on these transactions and he's in financial difficulty. I can see NewDay agreed a payment holiday with Mr F in September 2022, which was due to continue until 1 January 2023. It's unclear what arrangements Mr F has made with NewDay to repay the balance since then, but that's for Mr F to discuss directly with them. And I'll remind NewDay of their obligations to treat Mr F positively and sympathetically.

I also note NewDay credited Mr F's account with £25 in recognition of some poor service he received on the phone and I find that's fair and reasonable in the circumstances.

My final decision

For the reasons I've explained, I don't uphold Mr F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 7 June 2023.

Eleanor Rippengale
Ombudsman