

The complaint

Mr S has complained that NewDay Ltd trading as Aqua refused to refund transactions on his credit card made to a cryptocurrency company. He said he never made or authorised or made these transactions.

What happened

Mr S said he acquired this credit card to improve his credit rating. He raised the five disputed transactions to this cryptocurrency company all done on 18 August and he raised a charge back on the other five transactions done on 30 August given the goods and services weren't received.

Aqua looked into Mr S' concerns and initially refunded the transactions and fees whilst it investigated. For the transactions done on 18 August which Mr S raised as fraud, it found the transactions were done using Mr S' card plus it sent One Time Passcodes (OTP) to Mr S' mobile phone which were then verified on that mobile phone before the transactions went through. It also discovered the IP used was the same the IP address used for undisputed transactions which Mr S had done previously. So, it took back the initial refunds and didn't uphold this part of his complaint.

For the disputed transactions which were done on 30 August, Mr S raised four of the five of these transactions under the chargeback rules for them. This was defended by the cryptocurrency company so Aqua didn't pursue this any further. It did however provide Mr S with £65 compensation for some issues with the line in some calls Mr S made to Aqua. Mr S remained dissatisfied and brought his complaint to us. The investigator didn't think Aqua had to do anything more. Mr S didn't agree so his complaint has 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.

Having done so, I'm not upholding this complaint. I'll now explain why.

The rules which concern disputed transactions like this are called the Payment Service Regulations (PSR's). Under these rules a customer is deemed liable for any authorised transactions. 'Authorised' under the PSR's means the following:

*'A payment transaction is to be regarded as having been authorised by the payer for the purposes of this part only if **the payer has given its consent to the execution of the payment transaction; or the execution of a series of payment transactions of which that payment transaction forms part.***

Consent is also defined by the PSR's and it doesn't have the more usual meaning in everyday speech. It is as follows:

*‘Such consent must be given **in the form, and in accordance with the procedure,** agreed between the payer and its payment service provider.’*

What this means in Mr S’ complaint, is that if the correct card details were used and verification was confirmed using the registered mobile phone by answering the OTP then the transaction is deemed to be both consented to and authorised. Aqua’s evidence clearly shows this. And its evidence goes even further as it has identified the same IP address which Mr S has used for other transactions which he’s not disputing were also used for these transactions.

Mr S is adamant he has not lost his card and no one else has access to it and that he still has the same mobile phone. Also, Aqua has shown he has previously responded to an OPT on transactions which weren’t disputed. So, I’m satisfied that there is no indication of fraud for the transactions carried out on 18 August. And it’s more than probable that Mr S or someone on his behalf made these transactions. Therefore, I consider Aqua’s refusal to refund Mr S to be in line with the PSR’s and therefore is fair and reasonable.

Turning to the disputed transactions done on 30 August, Mr S applied for a chargeback online for those transactions. So initially as per the chargeback rules Aqua temporarily credited these transactions on Mr S’ card while it waited for the response back from the cryptocurrency company. Mr S’ claim here said the goods or services weren’t supplied. However, the merchant didn’t agree and showed Aqua that an account was set up in the name of someone with the same surname of Mr S and the same address. Therefore, Aqua was of the view that the chargeback was unlikely to succeed and the refunds were also taken back. Given the evidence supplied by the merchant, I consider that Aqua’s ultimate decision to refuse to refund these transactions done on 30 August was also fair and reasonable.

Mr S complained that when he called Aqua several times the call got cut off. Although Aqua couldn’t find any fault with its phone lines, it paid Mr S £65 compensation. I consider this fair and in line with our award of compensation for such issues.

My final decision

So, for these reasons it’s my final decision that I don’t uphold this complaint

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 2 August 2023.

Rona Doyle
Ombudsman