

## **The complaint**

Ms B complains that NewDay Ltd, trading as Aquacard, won't refund transactions on her credit card that she didn't make or otherwise authorise.

## **What happened**

In February 2022, Ms B contacted NewDay and disputed all the transactions on her credit card between 4 November 2021 and 2 February 2022. She said she didn't make any of them. Ms B told NewDay that she'd been away from her home during that time and had left her card at home. She suspected that someone known to her, a friend who'd been looking after her home while she was away and knew her card's PIN, made the disputed transactions.

NewDay investigated Ms B's claim and declined to refund her alleged loss – it considered that she'd likely authorised the disputed transactions.

Our investigator initially upheld the complaint as they weren't satisfied that Ms B had consented to the transactions. NewDay disagreed and provided additional information highlighting discrepancies in Ms B's testimony. The investigator reconsidered the matter and agreed there were contradictions in what Ms B had told NewDay, the police, and our service about what had happened. Following another review, they weren't persuaded Ms B had substantiated her loss and concluded that it wouldn't be fair to hold NewDay responsible for it.

The case was then passed to me to decide as Ms B didn't agree with the investigator's revised findings. I wrote to Ms B informally and explained that while she may have been reluctant in sharing information as a friend was involved, I required further information – including a clear list of transactions in dispute – to reach a fair and reasonable outcome. When Ms B responded, it transpired that she'd since recognised making several transactions. The loss therefore came down from over £1,100 to around £400.

I passed the case back to the investigator for another review, taking into account the additional information and further clarification we'd received from Ms B. Their outcome remained unchanged. As Ms B doesn't agree, it's appropriate to move the case to the decision stage.

## **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'd like to reassure both parties that although I've only given an overview of what happened, I've read and considered everything we've been provided in its entirety.

The starting position is that a customer is liable for authorised transactions and a payment service provider (PSP) is liable if they're unauthorised. Pursuant to the Payment Services

Regulations 2017 (PSRs), authorisation depends on whether the transactions were authenticated correctly and whether the customer consented to them.

In this case, there doesn't appear to be any dispute that Ms B's security credentials (associated with her card) were used to make the transactions. Therefore, on balance, I'm satisfied that the transactions were authenticated correctly. What seems to be in dispute here is whether Ms B consented to them. Ms B says the third party knew her PIN as she had allowed them to take out money for her in the past. But her card and security credentials were used without her consent during the relevant period.

To decide whether Ms B, or someone acting with her authority, made the transactions, I've carefully considered what she's told us about what happened. And I've considered that in conjunction with a review of the available evidence.

Ms B hasn't been upfront with our service about which transactions she says she didn't make or otherwise authorise. It wasn't until I questioned some of the disputed transactions to merchants whom she'd previously paid that she said she recognised making them. She explained she'd added her card on to her phone wallet. At that point, I gave Ms B another opportunity to review her credit card statements for the period in question and highlight the disputed transactions. She said she didn't recognise any other payments besides the ones I'd highlighted. Yet, subsequently, when the investigator questioned some other transactions, Ms B told us that she recognised further transactions.

I find it odd that at first Ms B claimed she didn't make any of the transactions, only to later change her position when challenged by this service about certain transactions. And although she's now recognised making payments to several merchants (the loss is now nearly a third of the original claim), as the investigator has highlighted, some of the payments still in dispute are to merchants that Ms B has previously paid – including subscription services.

While reviewing the credit card statements, I can see payments were made to Ms B's credit card during the relevant period which she says she didn't make. There were eight payments in total, adding up to just under £600. Although these transactions were credits rather than payments from her credit card, I find it unusual that a third party would reduce the outstanding balance on Ms B's credit card account when they had no contractual liability for this.

Also, I can see that in November 2021 a money transfer for £50 was requested from Ms B's credit card to a current account which we've established belonged to Ms B (the account's since been closed). She disputes making this transaction. NewDay got in touch with Ms B's former current account provider, and it confirmed that no fraud was reported. I find it strange that a third party would send money to an account they don't have access to. It's stranger still that the funds were transferred to an account only Ms B had access to. This isn't typical of fraudulent behaviour.

What's more, the audit log shows there were frequent log-ons into Ms B's account through the NewDay mobile app during the period in question. And that is how the money transfer was requested. No allegation has been made about unauthorised access to Ms B's account via online banking or mobile banking app. And Ms B hasn't disputed the investigator's finding in their most recent view that she logged on to her app during the relevant period.

Overall, I can't say for sure what happened. But I only have to reach a decision based on the balance of probabilities, i.e., what I think is more likely than not to have happened. I've weighed up everything and given the discrepancies and a lack of plausible explanation, I don't consider it fair to tell NewDay to reimburse the transactions that are still in dispute.

Given all the evidence I've set out above, it seems more likely these were made by Ms B or someone with her authority.

I recognise that Ms B will likely be disappointed with this outcome. But I can't safely conclude that NewDay has been unreasonable in holding her liable. Because of this, I won't be asking it to do anything further.

### **My final decision**

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 25 May 2023.

Gagandeep Singh  
**Ombudsman**