

The complaint

Mr A complains that NewDay Ltd trading as Fluid Credit Card won't refund money he says he didn't receive from a cash machine.

What happened

Mr A says he tried to use a cash machine to take out money on 27 June 2022. But that no money was dispensed, and his card was retained. He is unhappy his account was debited with withdrawals of £250 and £50 plus a fee and that he has since had to pay interest on these amounts.

NewDay said it wouldn't be refunding the money. It set out that his card and PIN were used to make a balance enquiry at 11:18:30 that day. And at 11:18:37 £250 in cash was dispensed. An attempted withdrawal for a further £250 was declined at 11:19:11 due to it exceeding the withdrawal limit. And a withdrawal of £50 was made at 11:27 and that amount of cash was also dispensed.

Our investigator didn't recommend that the complaint be upheld. She had reviewed the evidence again and considered that Mr A had received the money. The information from NewDay confirmed the transactions it set out above. The cash machine owner had shown this and said that when the machine was next balanced there was a £20 surplus. This couldn't have accounted for any problem with Mr A's withdrawals. And also, NewDay showed that there had been an attempted use of the card on 28 June 2022 which was inconsistent with it being retained by the machine on 27 June 2022 as Mr A says. There was no point of compromise identified for his card or PIN. She sent Mr A a copy of the record showing the attempted use of the card on 28 June 2022.

Mr A didn't agree and wanted his complaint to be reviewed. He was upset to be accused of making a false claim and of contradicting himself. He insisted that he didn't receive any money and his card was captured by the cash machine. The staff at the retailer where the machine was located couldn't help. He called NewDay and it issued him with a new card and there is proof of this. Mr A wanted to know how a cancelled card could be used and there was nothing shown on his statement. He'd asked for CCTV footage to be obtained by NewDay several times. He had now had a copy of his account statements and there was nothing shown on 28 July 2022. Mr A said he was unhappy at the information we'd relied on which he believed to be 'fake' especially as this wasn't shown on headed paper and hadn't been verified. He said that he couldn't fathom this and given the injustice here he would be involving his solicitor.

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 need to take into account the Payment Services Regulations 2017 in considering this complaint. These say a payment can only be authorised if it was consented to. So, it's not enough for it just to be authenticated, say with a card and PIN. Where credit is involved, as

is the case here on credit cards, the Consumer Credit Act 1974 applies and it states that a consumer wouldn't be liable for an unauthorised payment *unless* they consented to someone else having possession of that card.

I'm satisfied that these withdrawals were made when the chip on the genuine card was read, and the correct PIN entered. The information from the cash machine owner, which I believe was shared with Mr A, shows that the money was dispensed. There is no record on that report of any incorrect PIN attempts relating to Mr A's card or that it was retained. The machine is shown to have been working both before and after the disputed transactions. And the machine owner has reported that there were no discrepancies that could account for the payments in dispute here. That is the information I'd expect NewDay to have obtained in response to the dispute. It wouldn't be in a position to request third party CCTV – that would be a matter for the relevant authorities when Mr A had reported this.

I want to set out some more background information here based on the case notes from NewDay. These state that the PIN for the card was viewed online on 25 and 26 June 2022. And that at 10:58 on 27 June 2022 Mr A called to unblock the PIN. This was done when a one-time passcode was sent to him, and it was noted he'd also need to go to a cash machine. As he says I can also see a record that he called at 11:28 to say his card had been taken and he then was noted to say this was when he was trying to unblock his account.

In an email to this service, he refers to having used two cash machines at the location. He'd also been asked by our investigator if he'd been distracted at all but said he hadn't been. I think that may have been relevant if for example he'd thought his card had been retained but someone else say had been able to take and use it. That's not his explanation and it would be unusual for that to happen, and the card to be used at the same location by a fraudster risking detection. And given the difficulty he says he'd been having unblocking his account there's no likely explanation of how an unknown third party would have seen the correct PIN. Mr A also seemed to have accepted trying to take out the amounts of money referred to above although I appreciate some time has passed since then. There is no record of any other attempted withdrawals or card use that day based on the audit information.

I note though the attempted use of the card on 28 June 2022. I say attempted because the card was retained as it isn't in dispute that Mr A had cancelled it by then. But I'm satisfied that the card hadn't been captured by a machine before then even if that's what Mr A thought. I appreciate Mr A is unhappy with the format of the information about this. That is the way it is produced from the system. I find it internally consistent with other information from NewDay and have no basis to find that this isn't genuine. It is also as I've set out not the only evidence I am relying on.

I won't be able to say *exactly* what happened and I'm thinking about what is *most likely*. I'm satisfied from the information provided that it's most likely the cash was correctly dispensed for the withdrawals in dispute. And that Mr A's card wasn't retained at that time in a machine. I've thought about whether it's possible he was distracted and someone else was able to use his card and PIN. But as I've set out above that's not consistent with the evidence and his testimony. Having balanced all the factors here I find it is reasonable for NewDay to hold him responsible for these withdrawals. I can appreciate how disappointed he'll be with my assessment.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 10 August 2023.

Michael Crewe
Ombudsman