

The complaint

Miss C complains that NewDay Ltd trading as Aqua ("Aqua") failed to refund a transaction she attempted from a cash machine that was faulty which impacted her credit file.

What happened

Miss C explained that she attempted to use an automated teller machine (ATM) to withdraw an amount of cash. She says that the machine didn't dispense any funds and a fault message was displayed on the screen.

Miss C checked her online account shortly afterwards and couldn't see that the transaction had registered on her online banking app. She went on to explain that she returned to the same ATM the same day and saw someone successfully withdraw cash from it. Miss C tried the same withdrawal again and the ATM dispensed the cash to her.

Miss C said that at the time, she hadn't sufficient credit on her account to cover both withdrawals and because she was satisfied the first one hadn't been successful, she was satisfied it had been an error, which was why she tried again.

Sometime later she noticed her account had registered both withdrawals and her account was now over the agreed credit limit.

Miss C approached Aqua about the problem, and they temporarily removed the charge from her account while they looked into it. Aqua approached the operator of the ATM using a Chargeback. This is a system designed to resolve issues with card payments.

The operator of the ATM replied to Aqua and sent evidence they believed showed that both ATM withdrawals were successful. Aqua advised Miss C that they accepted the evidence and reapplied the charge to her statement. Miss C was concerned about the outcome and that she had various charges added to her account as a result of the problem. She was also concerned that her credit file would be worse because of these charges. Aqua removed some of the charges as a gesture of goodwill.

Miss C then brought her complaint to our service for an independent review where it was looked into by one of our investigators. Both parties were asked for information about the problem and Miss C explained what had happened and she didn't accept that the first attempt to withdraw funds was successful.

Aqua provided details about both of the transactions which used Miss C's credit card and personal identification number (PIN) to authorise the transaction. They also provided a "journal roll" from the operator of the ATM that showed both transactions. The details included on the journal roll showed what denominations of notes were used in each of the withdrawals.

The investigator asked Aqua for additional information concerning the operation of the ATM which they hadn't produced. The information asked for included:

- Were there any reported issues with the ATM around the time of the transaction in question?
- Is there any evidence of a third-party device being fitted to the ATM in question?

- Provide your purge bin report for 15 September 2022 or confirm if any items were found in the purge bin.
- Provide viewable evidence of whether the ATM in question balanced at the end of the day.

Aqua argued that rules governing chargeback for ATM disputes required them to provide the journal roll and nothing further.

Based on the evidence presented during the investigation, Miss C's complaint was upheld on the basis that Aqua were unable to show that there hadn't been a technical fault with the withdrawal which they were required to do under the Payment Service Regulations (PSRs) 2017. It was recommended that Miss C receive a refund of the full amount of the withdrawal, remove associated charges and fees. Also to update the credit file to remove adverse reports relating to the disputed transaction.

Aqua disagreed and continued to argue that they weren't required to gather further evidence and the "journal roll" itself was sufficient to show that the withdrawal was successful.

As no agreement could be reached, the complaint was passed to me for a decision. As part of my investigation, I asked Aqua to go back to the operator of the ATM and seek further evidence showing that the ATM was operating properly. Nothing has been received from Aqua (including evidence that they made the request).

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 crux of this complaint is that Miss C believes an ATM operated by a third party failed to work properly when she attempted to withdraw £190. She says the ATM didn't dispense any funds and an error message came up on the screen. Miss C was able to retrieve her card and tried the same ATM later when she observed it working properly.

Aqua's case is that they believe they'd done enough by obtaining the journal roll when they processed a chargeback on behalf of Miss C. The journal roll showed two withdrawals attempted by Miss C and on both occasions it also showed that funds had been dispensed.

The Payment Service regulations 2017 S.75 state:

75.—(1) Where a payment service user—

(a)denies having authorised an executed payment transaction; or

(b)claims that a payment transaction has not been correctly executed,

it is for the payment service provider to prove that the payment transaction was authenticated, accurately recorded, entered in the payment service provider's accounts and not affected by a technical breakdown or some other deficiency in the service provided by the payment service provider.

What this means here is that Aqua have an obligation to ensure that there were no problems with the systems used to process the payment. The ATM was operated by a third party and they provided the journal roll as evidence the funds were dispensed.

But, on its own, the journal roll isn't generally sufficient evidence to determine that the ATM was working properly at the time. There can be a number of other steps in the withdrawal process that can go wrong such as some of the notes were damaged or the funds were retained by the ATM. Accordingly, ATM's have the ability to determine what, if anything, was wrong. There are other reports available from these machines, such as the "purge bin" report which is usually where damaged notes would be diverted to.

So, an ATM can have faults related to a withdrawal that the journal roll can't immediately identify and that's the reason why the investigator and myself sought additional information from Aqua. But, Aqua declined to obtain any further information, believing they'd done enough to show the funds were successfully withdrawn.

My considerations here are to determine if it was fair and reasonable in all the circumstances for Aqua to solely rely on the journal roll to deny Miss C a refund. Miss C said she didn't obtain her funds but was charged as though she did, causing her to attract additional charges and costs (some of which were refunded or removed by Aqua). It's Aqua's duty here to obtain sufficient evidence to either support that version of events or demonstrate the funds were successfully dispensed. Also to show that the ATM at the time was working properly and didn't have any other unaccounted for funds contained in it (that may be the withdrawal referred to by Miss C).

There remains a question about the performance of the ATM and Miss C's version of events describes a fault with it on the first attempt that Aqua declined to pursue. Having considered the evidence, I don't think it was fair or reasonable in this case to rely solely on the journal roll as evidence that the withdrawal was successful.

Putting things right

In order to put Miss C back in the position she would have been prior to her complaint, Aqua should now refund her the first attempted withdrawal (£190 + £1), remove any outstanding charges or costs resulting from the disputed transaction and to remove any related adverse information reported to the credit reference agencies.

My final decision

My final decision is that I uphold this complaint against NewDay Ltd trading as Aqua and they're instructed to settle the complaint as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 28 July 2023.

David Perry
Ombudsman