

The complaint

Mr Y complains that NewDay Ltd, trading as Burton, ("NewDay") has failed to reimburse him for payments he didn't make.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll summarise what happened and focus on giving the reasons for my decision.

- Mr Y disputed 41 transactions starting in March 2021. These payments were made to apps, which he'd used previously, using his own devices. And Mr Y believes these payments were made by relatives visiting his home.
- As NewDay didn't reimburse Mr Y for the transactions, he brought his complaint to our Service. He also complained about the service he received from NewDay when raising the disputed transactions.
- Our investigator considered the complaint, which was prolonged by repeated delays caused by NewDay. She ultimately concluded that Mr Y had provided a plausible explanation as to how the payments could have been made. And she wasn't persuaded that Mr Y had completed the agreed form and procedure. So she upheld the complaint. And she felt the service provided warranted a payment for the trouble and upset caused.
- NewDay disagreed. It didn't think there was enough evidence to confirm the transactions were fraudulent and it believes Mr Y authorised the transactions.
- Our investigator considered the points raised further but maintained her stance. She felt Mr Y continued to provide a plausible explanation for what happened.
- As the rules we follow – specifically Dispute Resolution rule 3.5.1 – allow, I got in touch with NewDay informally to let it know how I was intending to proceed. It hadn't responded to our investigator. Provisionally, I felt that Mr Y's testimony had been consistent and was plausible. And that NewDay hadn't given evidence to support that Mr Y had completed the form and procedure required to carry out the payments using a credit facility. So I was minded to uphold the complaint in line with the investigator's recommendation.
- Despite ample opportunity, NewDay hasn't responded to informal attempts to resolve this complaint. So, I'm now proceeding to decision to bring this matter to a close.

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 agree with the outcome reached by the investigator for the following reasons:

- Mr Y said he didn't authorise these transactions. He said he had two relatives staying with him at the time and that they could easily have located his phone and unlocked it, which could be done by entering a simple pattern. From here, seemingly no further passwords or login information would have been required and the card details were saved in the relevant apps. And, as the phone itself was within their possession, they would have been able to bypass any security measures – such as texts asking if 'Mr Y' was making the payment.
- The disputed payments were made using more than one device. Mr Y has explained that there were further devices in his home which wouldn't have been password-protected. I'm satisfied that the explanation here is plausible and has been consistent overall. Having said that, I note that Mr Y is now aware of an issue with the security of his devices and it would be prudent now, if he hasn't already, to take action to rectify this.
- NewDay stated it spoke with Mr Y on the phone to approve a payment that appears to be one of those in dispute. But I've not been provided with sufficient proof of this – the call recording is unavailable, and I've not been presented with further detail to support how NewDay can be confident it was Mr Y it spoke with.
- NewDay also referenced that Mr Y had been active on his online account during the time of the transactions. But these were relatively small payments to a merchant he'd used before so, in the circumstances of this case, I don't find it implausible that Mr Y might not have identified there was an issue until some time later.
- So, overall, I'm not persuaded that Mr Y completed the form and procedure or gave permission for someone else to make the payments on his behalf. In line with the Payment Service Regulations 2017, I consider these payments to be unauthorised. And given that the payments were made using a credit facility, Mr Y wouldn't be liable for the transactions. I will therefore be asking NewDay to refund these transactions.
- In addition, Mr Y raised concerns about the general service he'd received including poor communication around timescales involved in the investigation of his disputed transactions, discrepancies around the information recorded, and his experience with the call handlers. Our investigator recommended a payment of £100, which Mr Y accepted, and NewDay hasn't provided anything substantive to lead me to think differently here.

My final decision

For the reasons given above, I uphold this complaint against NewDay Ltd, trading as Burton. I require it to:

- Rework Mr Y's account to remove the disputed payments – I understand the amount to be £412.62 - as well as any interest or charges associated with these;
- If Mr Y has repaid some or all of the borrowing, it should refund the repayments and pay 8% simple interest per year from the date of the repayment to the date of settlement;

- If applicable, remove or correct any adverse information from Mr Y's credit file and CIFAS record;
- Pay £100 to reflect the trouble and upset caused by the service failings.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 27 September 2023.

Melanie Roberts
Ombudsman