

The complaint

Mr S complains that NewDay Ltd failed to refund transactions he didn't recognise.

What happened

Mr S had a credit card account operated by NewDay and noticed three transactions he didn't recognise. All three were made to companies overseas and were made on the same day.

Mr S notified NewDay about them and told them he wasn't responsible for the transactions. Mr S said hadn't given his card details to anyone else or stored them online. Mr S's personal arrangements meant that other persons had access to his home, but he didn't believe his card details had been taken by anyone else. NewDay provided a temporary refund of the charges while they looked into the situation.

NewDay then used the Chargeback system to dispute the payments. This is a system operated by the card processor, in this case Mastercard. The system enables the customer (Mr S) to ask his credit card company (NewDay) to challenge the transactions.

The system is subject to strict rules and requires the merchant who took the payment to "defend" it via their card processor. When NewDay disputed the three payments, they received evidence indicating that all three transactions were made using Mr S's card details, the evidence also included his email address, home address (using his postcode) and an IP address associated with other online activity Mr S had carried out with his NewDay card.

The IP address relates to a "location" linked to the internet activity of devices or the network used in the transaction. The evidence also included postal tracking data showing that all three parcels had been delivered.

Once NewDay received this evidence they advised Mr S they were declining his claim and recovered the temporary refund. Mr S appealed the decision although NewDay later recognised that they hadn't dealt with the appeal as quickly as they'd hoped and credited Mr S with £20 as an apology for the delay.

Mr S maintained that the websites were fraudulent and the merchants couldn't be contacted. Mr S believed that only one tracking number had been provided and there were three separate orders. He also told NewDay there was no record of the parcels being delivered to his address and he would be able to provide evidence to show this.

NewDay considered the appeal but didn't change their position and informed Mr S. He then explained to NewDay that he would like to make an application under s.75 of the Consumer Credit Act 1974. Essentially this enables (in certain circumstances) someone who purchases goods via credit to hold the credit provider (NewDay) responsible for issues with the merchant who supplied the goods/services.

NewDay declined the request because Mr S had already stated he hadn't authorised the transactions which meant that S.75 wasn't applicable.

Mr S remained unsatisfied with how NewDay had handled his situation and brought his complaint to the Financial Ombudsman Service where it was looked into by one of our investigators.

Evidence was provided by both parties. Mr S explained that he only used his credit card to make purchases from one particular merchant and provided a history of his recent purchases from them. Mr S raised issues surrounding the lack of detail available from the merchants who took the payments including return addresses/emails that he believed made it impossible for him to exercise his ability to return the items/obtain a refund.

NewDay provided evidence concerning the Chargeback details they'd received, and details of IP address data linked to other non-disputed uses of Mr S's credit card account. This IP data matched with the Chargeback information.

After considering the evidence, the investigator thought it unlikely that Mr S was responsible for the transactions and suggested that they may have been made by others present at Mr S's address.

NewDay disagreed and asked for a further review of the complaint which has now been passed to me for a decision. NewDay added that:

- It was unlikely that a third party or a fraudster would use Mr S's genuine email address as this would alert him to the payments.
- If Mr S believed the transactions were made by others at his home, he would need to provide supporting evidence of this by reporting it to the authorities.
- Notes of discussions with Mr S confirm that no one else had access to his card details.
- Mr S said he would have been awake at the time of the transactions but later said this wasn't the case.

I issued my provisional findings on the merits of Mr S's complaint on 2 June 2023. In my provisional findings, I explained why I intended to not to uphold Mr S's complaint and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

What I've provisionally 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 relevant law surrounding authorisations are the Payment Service Regulations 2017 and the Consumer Credit Act 1974. The basic position is that NewDay can hold Mr S liable for the disputed payments if the evidence suggests that it's more likely than not that he made them or authorised them.

NewDay can only refuse to refund unauthorised payments if it can prove Mr S authorised the transactions, but NewDay cannot say that the use of the card details for online purchases conclusively proves that the payments were authorised.

Unless NewDay can show that consent has been given, it has no authority to make the payment or to debit Mr S's account and any such transaction must be regarded as unauthorised. To start with, NewDay have explained how the payments were authenticated

with the payment tools issued to Mr S. I'll now need to consider the information provided by both parties to determine whether there's sufficient evidence to hold Mr S responsible for the disputed transactions or not.

NewDay chose to dispute the transactions on Mr S's behalf using the Chargeback system. This is something I'd expect NewDay to do once Mr S made his report to them about the unrecognised transactions. The response from the merchants provided details about the transactions and together with the details provided by NewDay, a picture has formed about what happened at the time these transactions were made.

The details provided through the Chargeback response show that all three packages were recorded as delivered, giving a date and time. One of those packages appears to have taken two attempts to be successfully delivered.

The Chargeback information includes Mr S's email address, his card number and the three-digit security number (CVV) from the back of the card (which isn't usually stored electronically). The correct postcode was also entered for Mr S's home address. Additionally, the information included an IP address which matched other non-disputed transactions. What that means here is that the disputed transactions were likely to have been made from the same device and location as other transactions using the same credit card.

Mr S has said that his card details aren't known to anyone else, but also that there are other persons visiting his address to assist him. If no one else had access to the card, then it seems implausible that these transactions could have been made successfully and considering they were made from a common IP address, the objective conclusion I would have to come to is that Mr S was responsible.

I considered the points raised by the investigator and whilst these transactions could have been made by others who attended Mr S's home, there's currently no evidence to support that, particularly given the lack of access to the relevant personal details needed to complete the transactions (card details including the security (CVV) number and personal email address). I don't think the reference to the merchant Mr S usually uses for this card is relevant as these transactions don't appear to have used that particular marketplace, so wouldn't be expected to be recorded in the purchase history.

Regarding Mr S's request for S.75 and references to the Consumer Credit Act – I don't think currently that these are relevant as it's Mr S's case that he didn't authorise the transactions. The various references he's made to Consumer Credit law relate to authorised transactions and issues related to their supply – which can't be relevant if Mr S denied making them. So, I haven't gone on to further consider these points.

I recognise that there are some unusual aspects to this complaint, as all three payments related to a product described as a "Mystery Box", so it's unclear what was being purchased. Also, that the complete address wasn't present in the delivery evidence, only the full postcode.

I have to make my decision based on the available evidence and where that's missing, on the balance of probabilities. Currently, I think the balance of evidence doesn't point to an unauthorised third party making these transactions – but I understand Mr S had told NewDay he could obtain further evidence to support his case. I haven't seen that evidence, but will consider anything further Mr S may wish to provide.

I invited Mr S and NewDay to give me any more evidence and information they wanted me to consider before issuing my final decision. NewDay didn't have anything further to add and Mr S didn't respond.

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, and as neither party had anything further to add, I see no reason to reach a different conclusion. So, this final decision confirms the findings set out in my provisional decision.

Overall, the evidence shows that Mr S was more likely than not responsible for making these transactions and it was reasonable for NewDay to hold him liable for them.

My final decision

My final decision is that I do not 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 8 September 2023.

David Perry
Ombudsman