

The complaint

Mr L complains that NewDay Limited, (trading as Aqua) won't refund him for transactions' he says he didn't make or authorise totalling just under £400. Mr L also complains that NewDay increased his credit limit without his knowledge.

What happened

Mr L has an Aqua credit card account, which he opened in 2019. When Mr L opened his account, the credit limit available to him was £600. Between December 2021 and January 2022, NewDay wrote to Mr L and offered to increase the credit limit of Mr L's account, and it steadily increased to £5,850. In January 2022, Mr L's credit limit was increased to £6,200, via Mr L's online account.

Mr L says he had no knowledge of the increases to believed that the credit limit of his account was much less and was actually £3,200. Not £6,200. He says he only found out that his credit limit had risen to just over £6,000 when he called NewDay after trying to increase his credit limit from £3,200 to £3,500, which was declined. At the time Mr L's balance was just under £6,500.

Mr L complained to NewDay. He said he had never received any letters about his credit limit increasing and had no recollection that it had increased to the level it had. He said he never received any account statements and had no idea that his balance had risen to just over £6,000. Mr L told NewDay that he wouldn't pay back anything above £3,200 and he is unhappy that he is being pursued to repay the money.

Mr L also disputed three cash withdrawal transactions which were made using his credit card in February 2021, June 2021, and September 2021. Mr L told NewDay that he didn't recognise these transactions. And hadn't made them. So, he asked NewDay to refund the transactions.

NewDay investigated and decided not to refund the disputed transactions. It concluded that it was likely Mr L authorised the transactions. NewDay also said that Mr L was aware that his credit limit had increased. In summary it said:

- From January 2022 until August 2022, Mr L has accessed his online account manager to view statements, make payments and request credit limits. As Mr L viewed his statements and accessed his online account, he would have been able to see that his credit limit was £6,200, and the spending on his account
- It sent Mr L letters to his home address in May 2021 increasing his credit limit to £4,350 and September 2021 offering to increase his credit limit to £5,850, which Mr L didn't decline
- Mr L requested an increase of £6,200 to his account credit limit through his online account manager in January 2022, which required security credentials to access
- There was no plausible explanation for how an unknown third party was able to gain access to Mr L's online banking to increase Mr L's credit limit
- The disputed transactions were made using Mr L's genuine card and PIN.
- There were no failed PIN attempts when the transactions took place

- There was no plausible explanation for how someone else was able to take Mr L's bank card, guess his PIN and use the card to make the transactions
- Mr L hadn't reported his card lost or stolen
- There were numerous undisputed transactions in between the disputed transactions
- The disputed transactions reduced Mr L's credit limit, but he didn't report the matter until sometime after the last disputed transaction had been made.

Mr L disagreed with NewDay's decision. He said he wasn't aware his credit limit had been increased and hadn't spent the money. So, he brought his complaint to this service where one of our investigators looked into the matter.

Based on the evidence she thought Mr L more likely than not authorised the transactions. In summary she said there was no plausible explanation for how an unknown third party could gain access to Mr L's credit card and be aware of Mr L's PIN to make the transactions. She also said that Mr L's card was generally used to make cash withdrawals. The investigator said that Mr L was aware of the credit limit increases to his account.

NewDay agreed. Mr L didn't He said he didn't know anything about the transactions and maintained he didn't know about the credit limit increases.

As no agreement could be reached the matter has come to me to decide.

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 should make it clear that this decision will focus on Mr L's complaint points that NewDay didn't make him aware of his credit card limit increases and transactions that he disputes.

The investigator wrote a detailed view that sets out the full facts, the disputed transactions, the relevant regulations, and the evidence. Both Mr L and NewDay have read the investigator's view. So, I won't repeat every detail here, only those which form the basis of my decision. However, I can assure Mr L that I've read the file, including his comments and evidence.

Credit card limit increase

Mr L says that he was unaware his credit card account limit had been increased to £6,200. He's said that he never agreed to any increases, and never received any letters from NewDay about raising the limit on his account. He's said that as far as he is concerned his credit card limit was £3,200, so he won't be repaying anything above this amount.

Having looked at all the evidence, I'm satisfied that Mr L was aware that his credit card limit went up between August 2020 and January 2021. I say this because NewDay has provided this service with copies of letters it sent to Mr L's address showing the increases made to Mr L's account. The letters are:

- Dated 12 August 2020 increasing Mr L's credit limit to £1,500
- Dated 16 September 2020 increasing Mr L's credit limit to £2,850
- Dated 17 May 2021 increasing Mr L's credit limit to £4,350
- Dated 14 September 2021 increasing Mr L's limit to £5,850

I haven't seen any evidence that Mr L was having problems receiving post, and I can see that the letters were correctly addressed. So, I think it's likely he did receive the letters letting him know that NewDay was increasing his credit limit. I note too that each letter told Mr L that if he didn't want to accept the increase, he just needed to let NewDay know. I've not

seen any evidence that Mr L contacted NewDay to say that he was unhappy with the increases.

NewDay has also provided technical evidence that shows Mr L logged onto his online banking on 31 January 2022 at 12:03 hours and increased his credit limit to £6,200. In order to access Mr L's online banking, a username and password are needed. I've not seen any evidence that Mr L has disclosed these details to anyone else. So, I think it's likely it was Mr L who logged in and increased the account limit.

From looking at the technical evidence I can also see that Mr L accessed his account online regularly to check his account, statements and make payments. On each occasion Mr L's credit limit would have been displayed on the screen along with his balance. I note too that Mr L requested a payment holiday on 12 February 2022 until April 2022, via his online account. NewDay followed up this request by sending Mr L a letter, and this letter showed Mr L had a credit limit of £6,200 and balance of £6,338.70. So, all in all I think it's likely that Mr L was aware of his credit limit. And had agreed to the increases.

Disputed transactions

Generally speaking, if the evidence suggests its more likely than not that Mr L authorised the disputed payments, NewDay is entitled to hold him liable. The relevant regulations, to this effect, are the Payment Services Regulations 2017 (the PSRs 2017). Mr L says he didn't make the disputed transactions, so my primary concern is to come to a view about whether or not I think Mr L authorised the transactions either by making them himself or allowing a third party to do so.

Having reviewed NewDay's technical evidence, I'm satisfied that Mr L's card details were used to make the disputed transactions and that they were authenticated. Authentication is the use of any procedure by which a bank is able to verify the use of a specific payment instrument, including its personalised security features. This can be done in a number of ways (e.g., chip and PIN, card number, CVV and expiry date etc.) In this case, NewDay has been able to provide evidence that the genuine card and PIN were used. So, I'm satisfied that the payments from Mr L's account was authenticated.

But the regulations relevant to this case say that this is not on its own enough to enable NewDay to hold Mr L liable for the transactions. So, I also need to think about whether the evidence suggests that it's more likely than not that Mr L consented to the transactions being made or whether he is the victim of fraud as he's suggested.

Having looked at all the evidence, I'm persuaded that Mr L did consent to the transactions he is disputing. I say this because:

- NewDay's technical records show the three transactions were made using Mr L's genuine card and PIN. The card wasn't reported as lost or stolen. So, there's no plausible explanation for how an unknown third party could do this without Mr L's consent. I say this because the person using Mr L's card would need his card and PIN. I think it unlikely that an unknown third party would be able to guess Mr L's PIN correctly.
- The disputed transactions took place months apart – in February 2021, June 2021, and September 2021. This means the fraudster needed access to Mr L's credit card over a period of several months. I think it's unlikely that an unknown third party without any connection to Mr L would've been able to do this.
- This would mean a third party would have to take and replace Mr L's credit card without being noticed over a period of eight months at different times. They would also have to have obtained Mr L's security details (Mr L's PIN). I don't think that an

unknown third party would risk taking Mr L's credit card, replacing it, taking it again, completing further transactions and then returning it. This back and forth would've created an unnecessary risk of alerting Mr L that fraudulent transactions were taking place.

- The disputed transactions don't fit the usual pattern of fraud. I say this because usually a fraudster will try and maximise the usage of the account to get the greatest benefit from the account before the account holder notices their funds are missing and the card is cancelled. But this didn't happen. Instead, the disputed transactions took place months apart and were of low value - £100, £230, and £50.
- Mr L made a high volume of undisputed transactions from his account including cash withdrawals in the same area during the period the disputed transactions were made.

So, when I weigh everything up, I'm not satisfied there's evidence of fraud here. Based on the evidence, the most likely explanation here is that Mr L authorised the disputed transactions. So, in the circumstances it wouldn't be fair for me to ask NewDay to refund Mr L.

Finally, I note that Mr L says he's unhappy that NewDay are asking him to repay the payments above what he believed to be his credit limit – in other words everything over £3,200. He is upset that NewDay have sent him a default notice and are pursuing him for money it says he owes. I can appreciate that the situation is no doubt stressful for Mr L. But for the reasons I've set out above I'm satisfied that Mr L authorised the three transactions on his account which he disputes. I also haven't seen any evidence that Mr L disputes making any other transactions that ultimately led to Mr L's current balance. So, NewDay is entitled to ask him to repay the money he owes. I would however remind NewDay of its obligation to treat a case of financial difficulty in a positive and sympathetic manner is an ongoing one; but Mr L also needs to be aware that that obligation won't necessarily prevent NewDay from seeking repayment in the future.

My final decision

For the reasons that I've explained above, 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 L to accept or reject my decision before 21 September 2023.

Sharon Kerrison
Ombudsman