

The complaint

Mr G is unhappy with the way NewDay Ltd treated him in relation to a chargeback dispute and concerns of fraud.

What happened

In April 2021, Mr G opened an account with a gambling website. Once Mr G uploaded funds to the account, he was given access to a range of different games where he could gamble. On 24 June 2021, Mr G used his NewDay credit card to transfer approximately £1,200 to his gambling account. This money was split across 14 different transactions and processed via a third party merchant.

In September 2021, Mr G contacted NewDay and said he'd been a victim of fraud. He explained that the gambling website was acting illegally as it didn't have a UK gambling licence. He also said the merchant named on his account statements wasn't connected to the gambling website. And the website was operating a scam because the games were rigged, pirated, and full of glitches. On the rare occasion he did win a game, he also explained that there was no way to withdraw funds. So, he asked NewDay to help him retrieve his money.

In response, NewDay said they didn't think this matter should be considered by their fraud team as there was no dispute Mr G authorised the payments. They also declined to progress a chargeback as they said the Mastercard chargeback rules have restrictions surrounding gambling transactions. However, they did pay him £100 compensation to reflect some customer service issues.

Mr G didn't think this was fair, so he referred the complaint to our service. In doing so, he said he didn't think NewDay should have treated his payments as gambling transactions given the circumstances. And as he was a victim of fraud, NewDay should have done considerably more to help him.

An investigator at this service then considered the complaint and upheld it. He thought NewDay should have been able to retrieve Mr G's funds using the chargeback scheme. As Mr G had provided evidence that his other credit card provider had been able to do so against the same merchant. He also said it would have been reasonable for NewDay to have selected 'goods or services not received' as the appropriate chargeback reason. To reflect the impact of this matter, he also asked NewDay to pay Mr G £100 additional compensation.

Mr G accepted the investigator's opinion, but NewDay didn't reply. After the complaint was assigned to me, they said they disagreed that a chargeback should have been attempted due to the restrictions on gambling transactions. They also said it was clear Mr G had received a service as the money for each transaction was successfully transferred to Mr G's gambling account. And they didn't think the other card provider's successful chargeback was a relevant consideration.

Provisional decision

On 22 September 2023, I issued a provisional decision as I disagreed with the investigator's opinion and explained that I didn't think the complaint should be upheld. I also acknowledged the significant disappointment the change in outcome would cause Mr G and the amount of time he'd waited for a decision.

NewDay accepted my provisional decision and didn't wish to add any further comments.

Mr G expressed his upset with the change in outcome and the investigator's opinion. However, he didn't provide any additional evidence or comments about the merits of the complaint for my consideration. So, while I appreciate his upset and strength of feeling, I see no reason to change my findings. The content which follows is therefore my provisional decision now made final.

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 would like to reassure NewDay and Mr G that although I have only summarised the background and arguments in the section above, I have read and considered everything provided about this complaint in its entirety. I also mean both sides no discourtesy by focusing on the points I think are central to the outcome of the complaint.

I'm aware Mr G has also raised a linked complaint and said NewDay should not have allowed him to open his account. It's my understanding NewDay upheld the complaint and our service agreed that refunding the interest and charges was a fair resolution. So, I won't comment on it any further, other than to say I'm aware it means NewDay haven't profited from the transactions at the heart of this complaint.

Did Mr G authorise the payments?

I can see that when Mr G initially asked NewDay for help, he told their fraud team he consented to the 14 payments leaving his account. This means for the purposes of the Payment Services Regulations 2017 (PSRs) the payments were authorised and Mr G is therefore deemed liable for them in the first instance.

I'm aware Mr G has said some of his payments were for more than he expected, however, he's not provided any evidence to support this. If there was a significant difference in the amounts, I think it's likely he would have raised this concern much sooner than he did. I'm also mindful of the fact, the payments were going outside of the UK, so it's possible any small difference in amounts may have related to foreign transaction or currency conversion fees. So, on balance, I'm not persuaded any of Mr G's payments were likely to have been for more than he authorised.

NewDay have explained that none of the 14 transactions were flagged by their security system as suspicious or blocked due to their connection to gambling. I don't find this surprising as I've seen the Merchant Category Code (MCC) for each transaction, and they relate to games and arcades rather than gambling. I'm also satisfied the name of the merchant and the number of transactions shouldn't have reasonably given any grounds for concern. And there was no way for NewDay's system to have known, Mr G didn't wish for his payments to be sent to the gambling website via a third party. So, I'm satisfied NewDay didn't do anything wrong by processing the transactions in line with Mr G's requests.

It may also help if I explain that when a bank or credit provider refers to terms like 'fraud' more often than not it's in situations where a third party has accessed a customer's account

and is spending or transferring their money without their knowledge or consent. This doesn't reflect the circumstances here, so I'm satisfied NewDay did what I'd reasonably expect by treating this matter as a payment dispute. It's also important that I stress that whether or not the gambling website was operating legally, or illegally, within the UK isn't something NewDay were required to consider when they processed Mr G's payments.

Did NewDay unfairly decline to attempt a chargeback?

Chargeback is the process by which payment disputes are resolved between card issuers and merchants under the relevant card scheme. The relevant card scheme here is Mastercard. I would usually expect a card provider to attempt a chargeback provided there is a reasonable prospect of success. So, I've carefully considered if NewDay treated Mr G fairly by declining to attempt a chargeback.

Mr G feels NewDay shouldn't have treated his payments as gambling transactions when they considered his chargeback request, but I respectfully disagree. The reason he made his payments was so he could load funds into his gambling account. I'm also satisfied that the crux of his dispute resolves around the fact he no longer believes it was a legitimate gambling website. So, I don't think NewDay did anything wrong by classifying his payments in this way.

In relation to gambling transactions, the card scheme provider Mastercard have said:

'If a cardholder authorized and engaged in a transaction with the intent to participate in gambling, investment or similar services, then Cardholder Dispute chargeback rights are restricted regardless of whether the activity was illegal and/or brand-damaging itself. Issuers have no chargeback rights related to the use of these chips or value, unspent chips, or withdrawal of such value, or on any winnings, gains or losses resulting from the use of such chips or value. In short, we consider the purpose of the Mastercard transaction to load funds into the gambling or investment account and not what activities are subsequently done with the funds'.

Based on the above, I'm satisfied NewDay acted reasonably by concluding the dispute wasn't covered under the chargeback scheme and there was no reasonable prospect of success. As it's clear the scheme isn't intended to cover disputes about the outcome of gambling, the withdrawal of funds, or any concerns that a gambling platform is acting illegally. Mr G has also made many references to playing games on the gambling website, so I'm satisfied his funds were successfully loaded into his gambling account.

Mr G has said NewDay must have made a mistake as his other credit card provider was able to retrieve funds from the same merchant via a successful chargeback. I can understand the frustration Mr G experienced in relation to this, but it doesn't automatically mean NewDay did anything wrong. When the dispute was received, NewDay considered it against the relevant chargeback rules, and for the reasons I've just explained, I'm satisfied they acted fairly in response. So, while I appreciate Mr G's other credit card provider made a different decision and was successful in their chargeback attempt, this doesn't impact my conclusions about NewDay's actions.

It's also worth noting that by the time NewDay received evidence of the other card provider's successful chargeback on 12 November 2021, more than 120 days had passed since the date of the gambling transactions. So, even if NewDay had reconsidered their position due to this new evidence, it would have been too late to attempt a chargeback under Mastercard's rules.

Did NewDay compensate Mr G fairly?

NewDay have acknowledged they made some customer service errors when responding to Mr G's dispute. I won't list them all here but having carefully considered everything that happened and the impact of those errors, I'm satisfied NewDay have already done enough to try and put things right. They've paid Mr G £100 compensation and I see no grounds for directing them to increase this amount.

My final decision

For the reasons I've explained, my final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 17 November 2023.

Claire Greene
Ombudsman