

The complaint

Mrs B complains that NewDay Ltd failed to prevent a payment of £159.09 being taken from her account; and that it has handled things poorly and caused her distress and inconvenience.

What happened

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, Mrs B has explained that in April 2023 she saw a product she was interested in on Facebook from a merchant I'll call S; to get a price, she had to fill in certain details; she clicked confirm; then before she knew it, she had a message on her phone from NewDay asking if she recognised a transaction of £159.09 to S. This led to Mrs B and NewDay speaking on the phone, and NewDay cancelling the transaction. But the same payment was subsequently then allowed through.

Ultimately, Mrs B has remained unhappy with NewDay, so she referred her complaint about NewDay to us. Our Investigator wasn't able to resolve things informally, so the case has been passed to me for a decision.

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've reached the same conclusion as our Investigator and for materially the same reasons. That is, I'm satisfied NewDay's offer to resolve this complaint is fair and reasonable. I acknowledge the strength of Mrs B's feelings on the matter and I can see she's been really upset about things. But I have to be reasonable. I think in this case NewDay could have done better, but overall £100 compensation is fair. I'll explain why.

First let me clarify what this decision is about. I understand NewDay has given Mrs B the £159.09 back (in amounts of £158.69 in May 2023 and 40p very recently; if NewDay hasn't yet refunded the 40p it should do so now). So, Mrs B hasn't suffered a direct loss from the payment now. I understand the final outcome of the chargeback may have been pending but this seems to now be settled in Mrs B's favour. So, this decision isn't about a direct loss from the payment, and if the chargeback failed for any reason that would be a matter for Mrs B to raise separately with NewDay in the first instance. Instead, what this decision is about is Mrs B's dissatisfaction with how NewDay handled things and the distress and inconvenience she says it has caused her.

I understand Mrs B says she was expecting the payment to be approximately £50 (not £159.09); and so when NewDay first messaged her asking if she recognised the transaction, she responded to say she didn't (because it was for the wrong amount). This led to Mrs B and NewDay speaking on the phone. During this call, NewDay explained the transaction had been flagged by its fraud prevention system. Mrs B then said that she *did* recognise the transaction but she didn't want it to go through, saying "*I don't want it to go through, yes, sorry, I made a mistake. I was looking at it, it got a bit complicated, and I pressed send and I*

didn't want to". NewDay said, "*That's not a problem, the transaction itself was declined so it hasn't gone through*". NewDay went on – following checks such as sending a One Time Passcode to Mrs B – to clear the restriction on her account the flag had implemented, so Mrs B could spend on her card again. And it told Mrs B that if she gave it five to ten minutes, her card should be back to normal, so if she wanted to go ahead with the transaction again (which Mrs B said she didn't) then she could do so.

Mrs B is very upset because I understand she says she went away from this call thinking the payment couldn't now be taken by S. But then a payment of £159.09 to S was nonetheless taken from her account. However, I have to be fair and say this is not what NewDay told Mrs B exactly. I've no doubt, however, that with the benefit of hindsight, NewDay would wish it had, during the call, been absolutely clear with Mrs B that it had declined the *first* attempted transaction from S, but that because it was removing the restriction from her account caused by the flag so she could spend again, S could attempt the transaction again (to take payment for the order Mrs B had placed) which wouldn't then necessarily be declined.

However, I have to be reasonable and proportionate here. When a business like NewDay messages a customer like this to check whether they recognise a particular transaction, it would be normally primarily checking whether the payment stems from unauthorised activity by a third party not initiated or recognised by the customer. And in some cases, it might be looking into whether its customer is at risk of financial harm from a scam. In other words, NewDay's intervention here would not have been from the perspective of supervising genuine transactions between a consumer and merchant. So whilst I understand Mrs B has questioned what the point would be of NewDay contacting her and cancelling the transaction if a fraudster could just put the payment through again (with success), I don't think that's fair here. Mrs B didn't say she was being scammed or that someone else must have made the transaction. She said she'd made a mistake and didn't want the payment to go through. NewDay said that's okay because the payment declined anyway. And I think it was reasonable enough, from the information Mrs B gave it on the call, for NewDay to feel comfortable that the £159.09 payment didn't stem from unauthorised activity by a third-party, and that Mrs B wasn't actively being scammed; but instead, she'd simply gone online and instructed a payment which she now wasn't happy with. So I don't think it acted unreasonably.

I've thought about what Mrs B has said about NewDay indicating in a later call with her that it would have suspicions about merchants like S. But I think this was part of NewDay trying to figure out and talk through what might have happened with Mrs B before everything was clear. However, in this call NewDay was talking as though the transaction wasn't genuine, when this is not exactly what Mrs B told NewDay on the first call – instead she said she had made the transaction in error and she wanted it cancelled. That is not the same thing as saying she did not recognise the transaction at all. And I've not seen anything to make me think NewDay reasonably ought to have thought at the outset that there was something untoward about the merchant *before* the £159.09 was then taken from the account, which it's important to note, stemmed from Mrs B's earlier activity and I understand the merchant was attempting to take payment again so it could process Mrs B's order (and as the parties are aware, S subsequently did process Mrs B's order and send it to her. And Mrs B returned this to S and sought a refund through chargeback which NewDay assisted with).

So, whilst I've considered everything Mrs B has said, I'm satisfied NewDay's offer to pay Mrs B £100 compensation is fair and reasonable. I say this because:

- As I've explained above, I can understand how the (second) payment of £159.09 ended up going through. NewDay could have been clearer about this. But bearing in mind what Mrs B said on the phone, I can understand why it did what it did.

- I've listened to the calls between Mrs B and NewDay and I think NewDay genuinely tried its best to help resolve things for her. For example, it explained at an early stage that it declines (as it puts it) 'per transaction' unless a customer is actively being scammed, which Mrs B apparently wasn't; so whilst it stopped the first transaction, this wouldn't automatically prevented future attempts. I think it did its best to help this make sense to Mrs B, in circumstances where she was very upset, and I think it was sympathetic.
- There was always going to be some level of distress and inconvenience involved in trying to recover the money through the chargeback process.
- NewDay's final response letter wasn't the best. But overall, in this case, I can't say it would be fair or proportionate for me to tell NewDay to pay Mrs B more than £100 for distress and inconvenience given what I've said, irrespective of Mrs B's point about this only amounting to £85 in reality due to her costs.

I appreciate Mrs B will be very disappointed. And as I've said, I acknowledge her strength of feelings on the matter. However, I think after Mrs B initiated the transaction there was realistically always going to be some level of distress and inconvenience involved. I don't think I can fairly hold NewDay responsible for that beyond the £100 it has already offered.

My final decision

For the reasons I've explained, I uphold this complaint in part and I direct NewDay Ltd to pay Mrs B £100 compensation for distress and inconvenience (if it's not already done so).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 30 November 2023.

Neil Bridge
Ombudsman