

## **The complaint**

Mr A complains that NewDay Ltd trading as Aqua ("Aqua") failed to refund transactions he didn't recognise.

## **What happened**

### *What Mr A says*

Mr A explained that he noticed a series of transactions had been made using his Aqua credit card that he didn't recognise. He went on to say that he was on holiday abroad at the time and only noticed when he was using his online Aqua app to check his account. The unrecognised transactions were all made in the UK whilst he was on holiday.

He said he then contacted Aqua about these transactions and asked them for a refund. Aqua wouldn't refund him believing him responsible for them as the personal identification number (PIN) was used to make the transactions.

Mr A confirmed that he hadn't provided the card or PIN to anyone or written the PIN down. He thought his card was at home at the time. Mr A confirmed his living arrangements meant that no one else he lived with could have been responsible.

Mr A complained to Aqua about the situation but they didn't change their position. Mr A then brought his complaint to the Financial Ombudsman Service for an independent review.

### *What Aqua say*

Aqua have said they couldn't find a compromise of Mr A's account or PIN. They said Mr A accessed his online banking sometime before contacting them about these transactions. They considered Mr A's complaint and didn't believe they should refund the charges made against his account. They did remove an over limit fee as a gesture of goodwill.

### *The investigation so far*

When Mr A's complaint was received, an investigator was assigned to look into the matter. He asked both parties for information about the circumstances and Mr A again explained he was abroad at the time, so couldn't have been responsible for these transactions. He provided evidence of his trip which showed he was out of the country.

He explained that he'd used his card and PIN at a garage some weeks earlier which could explain how his card had gone missing and the PIN observed.

Aqua provided details of the disputed transactions and an audit of the online access to Mr A's account carried out by Mr A. This showed that the disputed transactions used the PIN and Mr A had used his mobile banking app to check his account about two few weeks prior to contacting Aqua about the situation.

After reviewing the evidence, the investigator didn't think that Aqua should have to provide a refund or write off the charges against Mr A's account. In summary he said:

- There was no plausible reason why a thief who took the card when it was last used with the PIN would wait for such a long time before using it.
- No one else knew the PIN.
- The PIN was unlocked after it was viewed online during the period of the disputed transactions.
- There was a delay before reporting the issue to Aqua.

### **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.

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

Aqua can only refuse to refund unauthorised payments if it can prove Mr A authorised the transactions, but Aqua cannot say that the use of the card and PIN conclusively proves that the payments were authorised.

Unless Aqua can show that consent has been given, it has no authority to make the payment or to debit Mr A's account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for the disputed transactions. It shows that the transactions were authenticated using the payment tools issued to Mr A. I'll now need to consider the information provided by both parties to determine whether there's sufficient evidence to hold Mr A responsible for the disputed transactions or not.

Whilst I accept that Mr A was abroad at the time and couldn't have carried out the transactions himself, this doesn't automatically mean he can't be held liable for the use of his card. Essentially, if there's no plausible and realistic explanation how the card and PIN could have been obtained by an unknown third party, the complaint can't be upheld.

Mr A has said he doesn't know when he lost his card and he thought it was at home whilst he was abroad. He also confirmed no one else knew the PIN for the card and he hadn't written it down. Without the PIN, the disputed transactions couldn't have been made. Whilst I can accept that Mr A may have lost his card at some point, there's no explanation how someone could have obtained the PIN.

The last use of the card was at a garage some two months earlier. I don't think this is the explanation how someone could have obtained the card and PIN. That's because any thief who obtained both the card and PIN together wouldn't know when it would be reported and blocked. Typically, in this scenario the card is used immediately to maximise the chance of stealing the funds. That didn't happen here and I just don't think it's a plausible explanation for how the PIN was obtained. It's also unlikely a thief could guess the PIN due to the thousands of possible combinations.

Mr A has said his living arrangements mean that no one he lives with could have been responsible. I haven't seen any other explanation that could reasonably account for how an unknown third party could obtain the card and PIN to carry out these transactions.

I've also considered the delay in reporting the loss of funds by Mr A. Aqua's records show Mr A accessed his online app a few weeks before reporting it to them. When he accessed the

app, it's likely he saw the disputed transactions because up until that point, he hadn't utilised the majority of his credit limit, so these transactions should have stood out. I found it unusual that Mr A delayed this reporting as I would think most people would be concerned about the unrecognised transactions and wish to deal with them as soon as possible, not wait for a couple of weeks.

Overall and based on an objective review of the available evidence, I think it's more likely than not that Mr A was responsible for the use of his card to make the disputed transactions. It's both fair and reasonable for Aqua to hold him liable for the charges made against this credit account.

### **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 A to accept or reject my decision before 15 February 2024.

David Perry  
**Ombudsman**