

The complaint

Mrs G complains that NewDay Ltd trading as Pulse ("Pulse") held her liable for two failed cash withdrawals.

What happened

Mrs G used her Pulse credit card in an Automated Teller Machine (ATM) and attempted to withdraw £250. Mrs G explained that she saw an error message on the screen and her card was returned. She didn't receive any cash and left the ATM.

She later used a different card (held with another bank) at another ATM and was successful in withdrawing £250. The following day, Mrs G again attempted to withdraw £250 using her Pulse card from a different ATM. She experienced the same issue with an error message and no cash. Her card was returned to her.

When Mrs G received her statement, she saw that both withdrawals had been added to her credit card account and raised this with Pulse, who provided a temporary refund of the two transactions.

Pulse made enquiries with the operators of the ATM's using the chargeback process. Both operators said that the withdrawals were successful. Evidence was sent to Pulse showing Mrs G's card being entered into the machines and the cash dispensed. Pulse advised Mrs G they were removing the temporary refund from her account and re-applying the charges.

Mrs G raised a complaint with Pulse about their refusal to refund her and Pulse once again looked at the evidence they'd been sent. They didn't change their position and declined to refund Mrs G.

Unhappy with Pulse's decision, Mrs G brought her complaint to the Financial Ombudsman Service for an independent review. Her complaint was looked into by an investigator who asked both parties for information about the issue.

Mrs G was able to say that:

- She'd made the cash withdrawals to support a family member.
- On both occasions they failed to dispense cash.
- Error messages were seen on the screen.
- Mrs G's card was returned.
- Mrs G didn't notice the charges against her account until she received her statement.
- Mrs G believed the time frames related to the Chargeback process weren't adhered to.
- Mrs G has an *"impeccable record of appropriate and timely monthly payments....over a period of some 30 years..."*

Pulse provided copies of the evidence they'd been sent from the operators of the ATMs. They believed the evidence represented confirmation that the payments were successful.

The first withdrawal (ATM 1):

- Copy of a “journal role” showing the withdrawal of £250 with 5 x £10 and 10 x £20 notes. The ATM was balanced the following day and found to have a £30 surplus.
- Withdrawals were attempted either side of the disputed transaction, both for £300 but appear to have been abandoned.

The second withdrawal (ATM 2):

- Greater detail showing the transactions.
- Other card users both before and after appear to have aborted or removed their cards without withdrawing cash.
- Mrs G’s transaction shows a balance check was carried out and then £250 withdrawn with 25 x £10 notes. The card was returned.
- The ATM was checked about two weeks later and records show it had over £500 in the reject bin.

After reviewing the evidence, the investigator concluded this was a finely balanced complaint but overall accepted that Mrs G didn’t receive her funds and Pulse should refund them. In summary, the investigator’s report said:

- The evidence provided by the ATM providers wasn’t sufficient to prove the machines weren’t affected by a technical breakdown.
- It was Pulse’s responsibility to demonstrate this – relevant is S. 75 of the Payment Service Regulations 2017 (PSRs).
- There was no reason to disbelieve Mrs G’s version of events.
- There were surpluses in both ATMs.
- Mrs G believed the problem was due to the recent change in card to her Pulse card.
- Pulse should refund the two transactions and refund any interest or charges accrued as a result of them.

Pulse disagreed and argued that the evidence they’d provided was sufficient to hold Mrs G liable. Pulse said that as the ATM operators confirmed the withdrawals were successful, they could not dispute them any further based on the chargeback process. Pulse requested an Ombudsman review the complaint which has now been passed to me for a decision.

As part of my investigation, I asked Pulse to obtain further detail about the operation of ATM1. This was because the basis of the complaint related to the malfunction of the ATMs and I thought the evidence provided to date and was insufficient to show they were operating properly.

I asked for:

- A breakdown of timings of individual steps carried out during the withdrawal showing precise timings of the card being entered/cash dispensed/card removed/tally of the notes to show the reduction in stock.
- The same data for the transactions that took place either side of the disputed transaction. It was noted that both of these transactions were for the same amount and both changed, appearing to be abandoned as no cash was dispensed.
- Provide confirmation that no reports were received by the ATM operator of other user problems with that ATM and confirm that no external unauthorised devices were present or reported (cash traps).
- Confirm if the £30 surplus were the only funds found in the machine and that there were no other rejected notes or funds in the purge bin.

Pulse responded and confirmed that they couldn't find any issue within their own systems to account for Mrs Gs' complaint. They argued that the chargeback process was followed and there was no further requirement for them to provide anything further. They also stated that they are not able to continue the claim because the ATM providers sent appropriate evidence.

Pulse were reminded they were required to satisfy the PSRs (S. 75). They continued to argue that nothing further was required, they believed the particular provisions of S. 75 were met and they were doubtful that the ATM provider could be provide any further detail.

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.

Some discussion has taken place about the standards of information provided by Pulse. It's the case here that Pulse weren't the owners of the ATMs themselves, so relied on the operators to provide those details needed to understand what had happened at the ATM.

But, whilst Pulse weren't directly responsible for the operation of the ATMs, they are responsible for providing the relevant information in support of the appropriate regulations.

The Payment Service Regulations 2017 (PSRs) S.75 states that:

75.—(1) Where a payment service user—

(a)denies having authorised an executed payment transaction; or

(b)claims that a payment transaction has not been correctly executed,

it is for the payment service provider to prove that the payment transaction was authenticated, accurately recorded, entered in the payment service provider's accounts and **not affected by a technical breakdown or some other deficiency in the service provided by the payment service provider.**

Plainly that means that once Mrs G reported an issue with her withdrawals, it was Pulses responsibility to prove the various systems (including the ATMs) were working properly.

I've added bold text above to highlight the specific obligation that lies with Pulse in this complaint.

I've also noted the agreement between Pulse and the ATM operators, including the process they're required to use for disputes. Whilst I appreciate the boundaries of that agreement (chargebacks), Pulse are also required to meet S.75 of the regulations (above).

As I've already mentioned, the audit data provided for ATM 1 had several question marks over it which I'd asked Pulse to provide further information about. I note Pulses comments that they believe the provisions of S.75 were met and nothing further was required to show the withdrawals were successful. Also, their opinion that it wasn't likely to provide anything further, even if they did ask the ATM operator for further information.

To be clear here, I consider it the responsibility of Pulse to show the transactions met the conditions laid out in S.75, not anybody else.

Having attempted to gather further information about the complaint, Pulse's decision to rely on the chargeback process has meant that I've had to base my decision on the evidence I do have.

As I've mentioned already, there are question marks surrounding both transactions and the records presented to Pulse. Specifically, these relate to:

- Incomplete, aborted or failed transactions were present before and after those carried out by Mrs G.
- There's no evidence to confirm that other performance issues were present or that external devices may have been responsible for the loss of the funds.
- Limited data concerning the detailed processes carried out (in particular ATM 1)
- Both had surpluses which aren't explained.
- ATM 2's surplus was substantial and no indication of the reason why.
- Delayed balance of the machine.

In consideration of the above, I can't be certain that the ATMs correctly dispensed the cash to Mrs G. I think it's reasonable to expect Pulse to have carried out more enquiries with the ATM owners, particularly when specific requests have been made to them which go directly towards the complaint raised by Mrs G. I acknowledge that Pulse checked their own systems and couldn't find any errors to account for the complaint brought by Mrs G.

After weighing up the available evidence, I'm not persuaded that I can safely say that the 2 x £250 Mrs G requested was correctly dispensed. I say this because there's a lack of evidence concerning the performance of ATM 1 and it's not been possible to exclude other reasons (outlined above) that could have been responsible for the failed withdrawal. In respect of ATM 2, there was a substantial amount of funds in the reject bin that hasn't been explained and the machine operated for a number of days before being balanced.

Mrs G has been consistent with her version of events throughout the complaint process and went to her credit card provider to seek assistance. I accept that Pulse used the chargeback process to challenge the payment and made a temporary refund whilst they looked into it – something a responsible provider would do. But – given the additional issues raised with the evidence they were sent; I've found it difficult to show that the ATMs were operating properly.

I do acknowledge that it's more unusual to have two different ATMs run by different banks to both have issues, but here, Mrs G said she saw an error message on both occasions. She wasn't concerned at the time because she hadn't received any funds and wasn't aware of the problem until her statement arrived some weeks later. She later obtained the funds from a different card. This is all consistent with someone who didn't realise there had been a problem at the two ATMs.

I recognise this is a finely balanced complaint, but after considering all the available evidence, on balance, I think it's more likely than not that Mrs G didn't receive the money she requested from the ATMs, and it follows Pulse should refund Mrs G £500.

I haven't further considered the issue of whether the chargebacks were out of time because I've made a finding that a refund should be made by Pulse concerning both transactions.

Putting things right

In order to finalise this complaint, Pulse should now refund £500 to Mrs G and ensure that no charges or interest were applied to her account related to these charges. If they were, they should also be removed, and the account recalculated to ensure Mrs G is put back in the position she would have been prior to these transactions. I have considered further redress, but as the issue was with the ATMs, I don't think any further payment is warranted to Mrs G.

My final decision

My final decision is that I uphold this complaint and NewDay Ltd trading as Pulse are required to settle it as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 25 April 2024.

David Perry
Ombudsman