

## The complaint

Mr G holds/held a credit card account with NewDay Ltd trading as Debenhams Mastercard ("NewDay").

Mr G's complaint is about NewDay's refusal to reimburse him money he says he lost due to fraud.

## What happened

The circumstances of this complaint are well known to all parties concerned, so I will not repeat them again here in detail. However, I will provide an overview of events.

Mr G says he has fallen victim to fraud. In short, he says a fraudster used his credit card to make the following unauthorised payment transactions:

Payment Number	Date	Beneficiary	Amount
1	27 February 2024	AH Vets	£5,000
2	28 February 2024	AH Vets	£2,500
3	29 February 2024	AH Vets	£1,000

Mr G disputed the above with NewDay. When NewDay refused to reimburse Mr G, he raised a complaint, which he also referred to our service.

One of our investigators considered the complaint and did not uphold it. In summary, the investigator thought it was more likely than not – that the payment transactions concerned were authorised. As Mr G did not accept the investigator's findings, this matter has been passed to me to make a decision.

## What I have 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 find that the investigator at first instance was right to reach the conclusion they did. This is for reasons I set out in this decision.

## Regulatory framework

The regulations which apply in this matter are the Payment Services Regulations 2017 ("the PSRs").

## Authorisation

Under the PSRs, NewDay is required to refund any unauthorised payment transactions made from Mr G's account. Because Mr G is disputing the payments concerned, I must

decide, on the balance of probabilities, whether they were in fact authorised.

The test for authorisation is twofold.

### **Authentication**

Under the PSRs, NewDay must prove the disputed payment transactions were authenticated. That is, NewDay needs to provide technical information which shows that the transactions were made using Mr G's genuine card and security credentials – for example, the card's chip being engaged, correct PIN code entered, and correct card details used, etc. Having considered the technical information NewDay has provided, I am satisfied the disputed payment transactions were authenticated.

### **Consent**

Turning now to the second part of authorisation, consent.

Below are three possible scenarios regarding consent:

- a) Mr G consented to the disputed payment transactions himself. That is, he used his credit card to make the disputed payment transactions.
- b) Mr G provided authority to a third-party to consent to the disputed payment transactions. That is, Mr G provided authority to a third-party to use his credit card to make the disputed payment transactions.
- c) A third-party, without Mr G's authority, gave consent to the payment transactions. That is, a third-party used Mr G's credit card to make the disputed payment transactions without his authority.

In scenarios (a) and (b), Mr G authorised the disputed payment transactions, so redress would not be available to him. In scenario (c), Mr G did not authorise the transactions, so redress could potentially be available.

### **Which scenario applies?**

Mr G denies making the transactions himself, and he has not said that he provided authority to a third-party to make them. Therefore, I have reflected on whether it is likely scenario (c) applies in this matter, rather than (a) and/or (b). Having done so, I am not persuaded this is the case.

For a fraudster to have made Payment 1, they would have required Mr G's physical card and PIN code; and either the physical card or its details for Payments 2 and 3. I have weighed this against the following points.

First, Payment 1 was made in-person by Mr G's physical card being presented, and PIN code entered. Payment 2 and 3 did not require Mr G's physical card being presented in-person – for example, his card details could have been provided over the telephone to make the transactions. Mr G says he lost his card. However, he is unable to give any detailed indication as to how or where he lost his card; nor how a fraudster was able to obtain his PIN code or card details.

Secondly, the disputed payment transactions were made over a period of three days. This behaviour is not typical of an opportunistic fraudster. It is generally accepted that fraudsters

who have obtained someone's card dishonestly – will maximise spending on the card quickly before the card is blocked. This did not happen in the facts of this case.

Thirdly, I can see that three payment transactions were made – prior to the disputed payments – to AH Vets on 21, 22 and 26 February 2024. Mr G has not challenged these payments. To my mind, it seems unlikely that an opportunistic fraudster made payments, coincidentally, to the exact same vet Mr G's account made payments to previously.

Fourthly, Payment 1 was made via chip and PIN. This means a fraudster would have had to effectively steal Mr G's credit card and attend AH Vets in-person to make Payment 1. Again, this behaviour is not typical of a fraudster – particularly when considering the risks the fraudster would have taken by making a £5,000 payment in-person.

In my judgment, the above are a combination of persuasive factors – that when taken as a whole, they suggest, on balance, that either scenario (a) or (b) occurred in this matter.

### **Mr G's response to the investigator's assessment**

Mr G's position, broadly, is that the investigator's findings were based on assumptions and hypotheticals. I do not agree with this. When dealing with complaints such as Mr G's, reasonable conclusions must be drawn, on balance, based on the evidence available. This is what, to my mind, the investigator did in their assessment.

Mr G also alluded to the fact that his credit card might have been cloned. However, it is generally accepted that cloned cards will not work where a physical card is present – for example, chip and PIN payments. This is because for this type of transaction, the card's chip is engaged in different technical ways. Therefore, I am unable to accept the proposition that Mr G's card was cloned.

### **Subject Access Request**

Mr G has raised some concerns about a subject access request he raised with NewDay. These concerns did not form part of Mr G's initial complaint to NewDay. Therefore, Mr G should take this up with NewDay first and/or the Information Commissioner's Office.

### **Compensation for distress and/or inconvenience**

Mr G has raised some concerns about NewDay's customer service. That is, how one of NewDay's advisers communicated with him during a telephone call on 14 March 2024, which NewDay has apologised for; and NewDay's failure to follow up a promised call-back.

I have listened to the 14 March telephone call between Mr G and NewDay's adviser. Having done so, I do not find that the adviser was unprofessional during the call. On the contrary, I found Mr G to be quite difficult – raising his voice at the adviser and not allowing her to speak on occasion. I have no doubt this was due to his strength of feeling in this matter.

In relation to the follow-up calls, I can see from NewDay's records that a manager attempted to call Mr G on 15 March and 11 April 2024 to no avail.

For these reasons, I am not persuaded that any recompense is warranted for the above. Any distress and/or inconvenience Mr G has suffered is a result of the alleged fraudsters' actions – not NewDay's.

### **Conclusion**

Taking all the above points together, I find that NewDay acted fairly and reasonably in the circumstances of this complaint. Therefore, I will not be directing NewDay to do anything further.

Mr G has my sympathies in terms of the personal issues he says he is currently experiencing, which I will not share here. I invite Mr G to consider contacting AH Vets if he has not done so already. I say this in particular as previous undisputed payments have been made to AH Vets from Mr G's account. Therefore, AH Vets might be able to shed some light on what has happened in this case.

### **My final decision**

For the reasons set out 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 G to accept or reject my decision before 16 April 2025.

Tony Massiah  
**Ombudsman**