

## **The complaint**

Mr I complains that Newday Ltd (trading as Marbles) failed to refund him for transactions which he didn't recognise.

## **What happened**

The detailed background of this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mr I has explained that he noticed a series of transactions had been made using his Marbles credit card that he didn't recognise between 23 and 30 July 2024. These included nine credits of £3,400 being paid into Mr I's account on 27 July and 29 July 2024.

Following this Newday were notified by another bank that the nine credits paid into Mr I's account were fraudulent. So, it blocked Mr I's account and asked him to get in touch about the activity on his account.

Mr I contacted Newday and said he didn't know anything about the money that had been paid into his account. Mr I said he'd last used his card on 17 July 2024, when he allowed his wife and brother to make some purchases using his credit card, but he said he'd been present when this had happened. Mr I told Newday that he hadn't lost his credit card or shared his PIN with anyone else. So, he asked Newday to refund the transactions which amounted to just over £25,000.

Newday reviewed the disputed transactions and declined to refund them. It felt that it was most likely that Mr I had made or otherwise authorised the transactions. Newday also returned the fraudulent funds back to the sending bank.

In summary Newday said:

- Mr I hadn't reported his bank card as lost or stolen to them.
- A number of the transactions had been made via Chip and Pin and there was no plausible explanation for how an unknown third-party could have become aware of Mr I's Pin.
- Mr I had verified the disputed transactions that were declined via SMS to his registered mobile phone. Further transactions were declined in which he had to call in.
- Mr I had called with the same mobile number on the account, a one-time passcode was confirmed to the agent who then removed the block from the card.
- Mr I had called in multiple times into Marbles with the same mobile number on the account, and mobile number had always stayed the same since the account was opened.

Mr I remained unhappy and brought his complaint to our service where an investigator looked into what had happened. Mr I told our service that he'd given his credit card to a friend and his family to use to make purchases for his upcoming wedding.

The investigator asked Mr I for more information. Mr I said that he'd only allowed his wife and friend to make two purchases. And on both occasions, he was present.

The investigator reviewed all of the evidence and said Newday hadn't done anything wrong in declining to refund the disputed transactions.

Mr I disagreed he said he has been a victim of fraud. He's also said that he is now struggling financially, and his health has been impacted by what's happened. So that matter has come to me to decide.

### **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.

Between 23 and 30 July 2024, several transactions were made using Mr I's credit card at various retailers. These included Chip and Pin, contactless and online payments.

On 27 July 2024, three payments of £3,400 were paid into Mr I's account. On 29 July 2024, a further six payments of £3,400 were made onto Mr I's credit card. These payments were used to fund the disputed transactions. And later reported as fraudulent.

In this case, there doesn't appear to be any dispute that Mr I's security credentials (associated with his card) were used to make the transactions. Therefore, on balance, I'm satisfied that the transactions were authenticated correctly. What seems to be in dispute here is whether Mr I consented to them. Mr I says he's a victim of fraud and an unknown third party made the transactions.

To decide whether Mr I, or someone acting with his authority, made the transactions, I've carefully considered what he's told us about what happened. And I've considered that in conjunction with a review of the available evidence.

There are regulations which govern disputed transactions. Generally speaking, if the evidence suggests its more likely than not that Mr I authorised the payments, (either by making them himself or allowing someone else to) Newday are entitled to hold him liable for the disputed transactions. The relevant regulations, to this effect, are the Payment Services Regulations 2017 (the PSRs 2017).

The PSRs 2017 say a payment transaction is regarded as authorised if the payer has given consent to the execution of the payment transaction. If a payment service user (customer) denied having authorised an executed payment – the payment service provider (in this case Newday) has to prove the payment transaction was authenticated. And if it is deemed that a payment transaction hasn't been consented to, it isn't authorised. PSRs 2017 goes onto say a payment service provider is required to refund the amount of an unauthorised transaction to the payer.

Mr I says he didn't consent to or authorise the transactions and is seeking a refund. He also says he knows nothing about the fraudulent credits paid into his account.

Newday say the evidence suggests the transactions were likely made by Mr I, and he is therefore, liable for them. So, I need to think about whether the evidence I have suggests the payments were authenticated and whether it is more likely than not Mr I, or somebody with his knowledge or authority, carried out the transactions Mr I is now disputing.

Having looked at all the evidence, which includes the technical evidence provided by Newday, I don't think it's unreasonable for Newday to have concluded that Mr I more likely than not authorised the transactions. I say this because:

- Newday has provided technical evidence to show the transactions were properly authenticated for the disputed transactions. The transactions were made by reading the chip in Mr I's genuine card and someone entering the correct PIN code,
- This means that whoever made the transactions needed to be in possession of Mr I's credit card, and his PIN.
- Mr I has said that he hasn't disclosed his PIN or security banking credentials to anyone else. And he hasn't said that he has lost his mobile phone.
- Mr I has said that he didn't report his card as lost or stolen and he's still in possession of it.
- If Mr I hasn't disclosed his PIN or banking security information, it's unclear how an unknown third party could have guessed Mr I's PIN in order to make around twenty of the transactions.
- During the time that the disputed transactions were made there were numerous mobile banking logins on numerous dates using touch ID, and Mr I's passcode, using the mobile phone that Mr I had registered on his account and used previously. Mr I hasn't given any explanation as to how these could have been done by someone else.
- Newday also sent verification codes to Mr I's registered mobile phone which were verified, and they spoke to Mr I to verify a number of the disputed transactions.
- If Mr I had been the person logging into his online banking, I would have expected him to have brought the disputed transactions to Newday attention much sooner than he did; but he didn't do this until the bank asked him to explain the activity on his account – namely the fraudulent money that was paid into his account.
- Prior to the fraudulent funds coming into Mr I's account, the balance of Mr I's account was close to his credit limit. So, I also question how a fraudster would know Mr I had funds in his account to steal in the first place – this would have required heavy surveillance of Mr I's account – and I haven't any evidence that any other device other than Mr I's was accessing his account.
- While reviewing the credit card statements, I can see payments were made to Mr I's credit card during the relevant period which he says he didn't make. There were nine payments in total, adding up to just over £30,000. Although these transactions were credits rather than payments from his credit card, I find it unusual that a third party would reduce the outstanding balance on Mr I's credit card account when they had no contractual liability for this.
- I also find it strange that a third party would send money to an account they don't have access to. It's stranger still that the funds were transferred to an account only Mr I had access to. This isn't typical of fraudulent behaviour.
- Mr I has said he doesn't understand how Newday allowed the balance on his card to get so high when his credit limit is just over £4,500. In total I can see nine credits received totaling £30,600 were paid into Mr I's account on 27 and 29 July 2024. This would be how the spending limit of the card has gone over, as the card at the time of the time of the spending would've showed these credits affecting the balance. However, later the same day these credits were applied to the card, they were reversed as no funds were received from the sending bank which is why Mr I now owes Newday so much money.

- The majority of the large Chip & PIN transactions which were reported only happen the same day and shortly after these credits were received into the account. I find it highly unlikely that if a fraudster had found the card, that they would know when funds were available on the card to be able to spend them.
- If someone had acted fraudulently, I also find it unlikely that they'd make a series of transactions over a number of days. They'd be looking to take what they could before being discovered, and a block put on the account. But that's not what happened here.

I recognise that Mr I has said that he didn't authorise the transactions. But based on the evidence I've looked at it's hard for me to see how an unknown fraudulent third party could have obtained all of Mr I's security information, credit card, and mobile phone to access his account. When I weigh everything up, on balance, the most likely explanation here is that Mr I made the disputed transactions himself or allowed someone else to do so with his knowledge and consent.

Overall, I can't say for sure what happened. But I only have to reach a decision based on the balance of probabilities, i.e., what I think is more likely than not to have happened. I've weighed up everything and given the discrepancies and a lack of plausible explanation, I don't consider it fair to tell NewDay to reimburse the transactions that are still in dispute.

Following the investigation into the disputed transactions NewDay made a decision to withdraw Mr I's credit facility restricting his account to payment only. NewDay are entitled to decide who they offer a credit facility to as this is a commercial decision. And the terms and conditions of the account explain they may cancel or suspend the use of the account. I can also see they made Mr I aware of this decision so I can't fairly conclude they've done anything wrong here.

In summary, on balance, based on the evidence, I think it more likely than not that Mr I authorised or consented to the disputed transactions so I can't fairly ask NewDay to refund them. And I'm satisfied NewDay's entitled to restrict the account in line with their terms and conditions.

### **My final decision**

For the reasons I've explained, 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 I to accept or reject my decision before 28 April 2025.

Sharon Kerrison  
**Ombudsman**