

The complaint

Miss B is unhappy about gambling transactions that took place on her credit card account held with NewDay Ltd trading as Fluid.

What happened

Miss B has explained that she was off work from January 2024 and began receiving treatment which required regular stays in hospital and when she was out of hospital she was mostly recovering in bed. Miss B also had an operation in November 2024.

Miss B's young son became her carer, and she's explained she handed over the reins of the house to him as she was very unwell. Miss B gave her son all her details, including her phone which had her ApplePay on for the intended use of running of the house.

However, Miss B's son used her credit card for gaming in April, May and during the period of August – November 2024 and spent a significant amount of money. Repayments were made to the credit card from Miss B's bank account (who I'll refer to as "S") using funds she had received from a critical illness policy payout. Miss B is understandably very upset by this and has said she needs this money.

Fluid rejected Miss B's claim as it said she allowed her son access to her card and phone containing her Apple Pay. They also noted some of the transactions were continuing to take place on her account with S since the fraud had been reported - although Miss B denied this. Fluid also pointed out that Miss B hadn't reported the fraud to S nor had she informed the police.

Our investigator didn't uphold the complaint. Although he acknowledged Miss B's son had mis-used the card, Miss B had still given him apparent authority to use it. Miss B argued Fluid should have stepped in sooner based on the account activity and had they done so some of the transactions would have been prevented.

Our investigator didn't agree as Miss B was making high and frequent repayments towards the credit card to maintain it, which would also suggest Miss B had an awareness of the account activity. He also explained each merchant is responsible for providing a code and in this instance the code provided by the merchants were for gaming rather than gambling. He therefore concluded Fluid hadn't done anything wrong in processing these payments.

Following our investigator's findings, Miss B also said she was unhappy about the level of customer service received from Fluid in particular there was no holding or final response letter, and no contact for months.

As Miss B remained unhappy, the complaint has been passed to me to deal with.

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.

First of all, I am very sorry to hear about the health issues Miss B has had, this has no doubt been an incredibly difficult and anxious time for her. I'd like to thank Miss B for the information she provided about her treatment, this has been very useful in understanding what was happening at the time. I understand this has deeply affected Miss B both physically and emotionally and I really empathise with her and the situation she unfortunately found herself in. I have no doubt whatsoever that the complaint with Fluid added considerable stress to what she was already experiencing. So, I'd like to reassure Miss B I have taken into account her personal circumstances in assessing her complaint.

The disputed transactions

The relevant regulations here – the Payment Services Regulations 2017 – say that generally a consumer won't be held liable for any transactions made on their account that they didn't authorise, except in limited circumstances. In this case the most important question I need to answer is whether I think it's more likely than not Miss B, or someone acting on her behalf, authorised the transactions.

Fluid has said that Apple Pay was added to Miss B's device. Miss B has said that she had two phones one of which she gave to her young son. Miss B also said this phone had the gaming apps on and she knowingly kept her Apple Pay on this device for the purposes of her son being able to pay for anything relating to the running of the household whilst she was so unwell.

Having looked at the records provided by Fluid I can see that the gaming transactions that took place were made using Apple Pay and based on Miss B's testimony I'm satisfied that on balance it was Miss B's son making these transactions on a device that she was aware he was using.

Although I understand Miss B allowed her son to use Apple Pay only for the purposes of making payments for the running of the house, this does mean that Miss B had given him her authority to use her Apple Pay - even though he unfortunately decided to make transactions for other purposes than intended.

Miss B has asked me to look at her complaint with compassion as to why she made the decision to trust her son as her mind was all over the place. I do understand Miss B was in an incredibly difficult situation and trusted her son in good faith to only pay household related items or bills. But unfortunately, by trusting him with access to her Apple Pay, she had given him her authority to use her account in general - even though he used the card for gaming.

There is no evidence to suggest Miss B removed the authority at any point. I say this because her son appeared to have access to Miss B's details and phone throughout in order to carry out the transactions and this wasn't taken away from him or removed from the phone. I also noticed that although Miss B has said the transactions took place in April, May and August – November, I can see there were transactions to the same merchants in between these times.

Despite Miss B's difficult circumstances I think it would be fair to say that Miss B was aware (or ought to have known) what was happening with her credit card but left the card details on the phone her son had access to. I'll explain why I think Miss B was aware or ought to have known what was happening.

In an email to our service dated 25 April 2025, Miss B has said that she was aware her son was playing games on her phone although she thought they were "light-hearted" apps. I notice she's also said he has been allowed to make other gaming purchases. This shows Miss B was aware her son had access to her Apple Pay and that her son could make

gaming purchases freely. So, I do think she ought to have known it was possible he could spend further money on the gaming apps using her Apple Pay.

Furthermore the credit card statements show the account received regular repayments from Miss B's bank account with S. Miss B seems to suggest that she was the one that was paying her credit card (for example in a call dated 8 July 2024 and in an email dated 8 October 2025) although understandably she said she did this without thinking as she had so much going on.

If it was Miss B making the repayments I think she should have identified there were disputed transactions on the account. I say this because some of the repayments were large and were increasing substantially over time. For example, the May 2024 statements show that repayments totalling £1,000 had previously been paid, the September 2024 statements show payments and credits totalling £4,516.67 had been paid, and the November 2024 statements show this had increased to £28,882.39 which is a large and noticeable sum.

However, Miss B has also said (for example in her complaint form) that her son made the repayments using her account with S and it was only in November 2024 that she became aware when Fluid tried to call her regarding the account activity. But despite this, I think the onus was on her to check what spending had been carried out and question anything that she hadn't agreed to – even though I fully accept her mind was more focused on her health at the time.

Miss B has also said in a phone call with the bank that she probably did log into her online banking although wasn't paying attention. Miss B said the repayments were made using the payout from her critical illness policy which she needed whilst she was off work recovering. So I don't think it would have been unreasonable to expect Miss B to notice these funds were quickly depleting given the importance of this money as she was off work.

So whilst I accept Miss B was hugely distracted with her health, I think she could have noticed what was happening with her credit card account. I also say this because the disputed transactions were carried out over many months, which extended the time Miss B had to notice something wasn't right.

Taking everything into account, I think Miss B's son had her apparent authority to carry out the transactions and therefore I think the payments in dispute were authorised. It follows that I don't think Fluid need to provide Miss B with a refund for the disputed transactions, or any associated interest or charges.

I realise this will be a huge disappointment for Miss B. I know Miss B has said she needs a refund as the repayments have used up the payout from her critical illness policy, but I cannot fairly ask Fluid to provide her with a refund in light of the evidence provided by both her and Fluid. I have also gone on to consider the other aspects Miss B has complained.

Gambling transactions

Miss B has questioned why gambling transactions were allowed to take place on her account when Fluid have said this shouldn't have happened.

As Fluid explained to Miss B, when a payment is presented the merchant (in this case, the gaming company) provide a financial institution (in this case Fluid) with a code and Fluid can decide whether or not to allow the transaction to debit. I've seen evidence that the merchants used a different category code to allow the transactions to go through. They have used a 'gaming' category rather than a 'gambling' one so Fluid didn't have a reason to decline the transactions on this basis alone. I should explain, that the code is the identifying

factor for Fluid rather than the merchant name or any other potential identifiers. I therefore don't think Fluid did anything wrong in processing these transactions.

Miss B has also questioned why it took Fluid three months to contact her regarding the account activity. She's said her credit limit increased in September 2024 so someone was looking at her account and should have cancelled it at that stage due to the gambling, but Fluid didn't get in touch until November 2024. It's unclear whether this was an automatic increase but if it was, these are based on account behaviour rather than the specific transactions and someone physically monitoring the account. In any event, Miss B statements show her account was receiving repayments and it was being maintained so I don't think it was unreasonable for Fluid not to have got in touch sooner.

Customer service

Miss B is unhappy about the level of customer service she received from Fluid especially as she didn't get an answer on her complaint. I can see that Miss B spoke to Fluid in November 2024 when they drew her attention to the account activity. It seems that she raised her complaint around 3 December 2024 and Fluid sent a holding letter on 9 December 2024.

On 13 December 2024 Fluid sent a final response letter which explained why gambling transactions had been allowed to take place on her account. However, they explained the fraud aspect of the complaint had been escalated to senior management.

It seems that Fluid contacted her again on 11 December 2024, 18 December 2024 and 8 January 2025 as they requested additional information from her but there was no response. Fluid didn't pursue this any further, nor try other methods of contact and I don't think this was unreasonable.

It seems that Miss B initiated further contact in May 2025 by which time the complaint was already at our service. I've listened to a call around July time and Fluid explained to Miss B they were holding her liable. Whilst I appreciate Miss B would have liked a response sooner, I don't think Fluid were unreasonable in the time taken once they'd heard back from her regarding her complaint.

Conclusions

For the reasons I've explained above, I'm not upholding this complaint. I realise this will be extremely disappointing for Miss B. I can assure Miss B that throughout my assessment of her complaint I've kept in mind her personal circumstances. However, my role is to be impartial and taking into account all the evidence I cannot fairly say Fluid should provide Miss B with a refund.

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 Miss B to accept or reject my decision before 20 March 2026.

Marie Camenzuli
Ombudsman