

Complaint

Miss M has complained that NewDay Ltd won't refund her for cash not dispensed by a cash machine.

Background

I recently issued my provisional conclusions setting out the events leading up to this complaint, and how I thought best to resolve it. I've attached a copy of my provisional decision, which forms part of this final decision.

I invited both parties to let me have any further comments they wished to make in response to my provisional conclusions.

Neither party has responded.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As I have not received any further or additional comments, I've no reason to reach a different conclusion.

My final decision is I won't be asking NewDay Ltd to refund Miss M.

My final decision

My final decision is that I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 16 February 2020.

Razia Karim
ombudsman

Complaint

Miss M has complained that NewDay Ltd won't refund her for cash not dispensed by a cash machine.

Background

Miss M has an Aqua credit card with NewDay. On 13 February 2018, she tried to withdraw £300 from a cash machine using her Aqua card. She said the machine didn't dispense the cash. However, NewDay debited her account with £300.

Miss M wasn't happy with this outcome, so she brought her complaint to this service.

What Miss M told us

Miss M told us that the cash machine didn't dispense the £300 she requested and retained her card. She said she waited for around five minutes, but nothing happened. As the cash machine was outside a bank, she went inside to ask someone to retrieve her card. She said the staff told her to contact her credit card provider, which was NewDay.

NewDay told her it would raise a chargeback with the bank, and it re-credited her account with the £300. She heard nothing further until April 2018 when NewDay re-debited her account with £300.

NewDay's response

In its final response letter, NewDay said the bank defended the chargeback claim. It wrote to her, sending her documents and inviting her comments. It said she didn't respond so it re-debited her account.

Miss M replied that she hadn't received the documents from NewDay

Our adjudicator's view

Our adjudicator recommended that NewDay refund the £300.

He thought there was no evidence that the cash had been dispensed. He said the journal roll for the cash machine showed an error with the transaction and that Miss M's card had been retained. And, NewDay couldn't show the cash machine had balanced or operated without a fault that day.

My provisional findings

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'm afraid I won't be upholding Miss M's complaint.

The Payment Services Regulations primarily require banks to refund customers if they didn't make or authorise payments themselves. So, when we look at whether a bank has acted fairly in rejecting someone's complaint, one of the things we consider is whether the customer made the transactions themselves or allowed them to be made. If they did, then we generally wouldn't ask the bank to refund them.

Ordinarily, to help me decide what happened, I'll look at the evidence from the cash machine. I'll look at the transactions made that day; the balance in the machine; whether there was cash in the reject bin and whether any other users of the machine reported faults.

NewDay says that, apart from the transactions, it doesn't have any of this evidence. It says it's not entitled to that information from the cash machine owner. This is unsatisfactory. However, in this case, there is additional information, which suggests that Miss M might have made a mistake.

NewDay has explained that, according to the journal roll, Miss M made two consecutive transactions at the same cash machine but with different cards.

I have looked at the journal roll for the cash machine. This is an electronic print out of the transactions, which took place that day. It shows that Miss M inserted her Aqua credit card at 10:47, entered her PIN and an amount for £300. According to the journal roll, the £300 was dispensed.

At 10:48, she inserted a second credit card. Again, the journal roll shows she entered her PIN and an amount for £300. The cash machine registered an error, the transaction was suspended, and the card was retained.

The card provider has also confirmed that the card was hers. Miss M has now confirmed that she did use this other card but says that she used it before the Aqua Card.

I have also seen that another customer used the cash machine at 10:46, before Miss M used the machine. The machine was working and there are no recorded errors for that transaction.

A third customer used the machine at 10:59. There are no recorded errors for that transaction and the machine appears to be working.

Normally, the use of a second card might be proof that the first transaction failed. But Miss M didn't say that. She said she used the Aqua card after using the other card. And, in this case, the journal roll shows that it was the second transaction, which failed and her second card, which was retained, not the Aqua card. In fact, she only admitted to the second card after NewDay pointed it out on the journal roll.

I've also taken into account that Miss M didn't complain about two failed transactions or losing two cards in the machine. And, according to the card provider, she reported the second card as lost on 7 March 2018, not when it had been retained by the ATM.

Based on this evidence, I think it's more likely Miss M has confused the Aqua card with the second card. And I consider there is enough evidence here for me to conclude that Miss M withdrew £300 cash with her Aqua card.

In these circumstances, I don't think it's fair and reasonable to ask NewDay to refund the £300.

My provisional decision

My provisional decision is that I won't be asking NewDay Ltd to refund Miss M.