

## **complaint**

Mr S complains that NewDay Ltd is holding him liable for £1,987.57 of card payments which he says he didn't make or otherwise authorise.

## **what happened**

On 26 April 2017, a credit card account was opened in Mr S's name using his full name, date of birth, address, phone numbers, and details of his finances. Mr S says he received the card and kept it.

On 5 May 2017, the card was activated by a phone call to NewDay. On 9 May 2017, someone set up an online servicing account to manage the card.

On 10 May 2017, there was an attempt to use the card to make a £2,124.15 purchase at a large retail store, and for an online purchase of £61.20. However, these payments would have brought the card over its credit limit, so the transactions and the card were blocked. NewDay phoned Mr S but couldn't get through, so they sent him a letter to let him know what had happened.

On 31 May 2017, NewDay were phoned by a man who was able to pass security and be identified as Mr S. He confirmed he had tried to make the payments. He ordered a new card to replace the blocked one.

Mr S confirmed he also received this replacement card and kept it. It was activated on 7 June 2017.

On 30 June 2017, a successful purchase of £1,900 was made at the same retail store as the one in May. Then on 12 July 2017, a further payment of £87.57 was made at a different shop.

Mr S was sent statements on 5 July 2017 and 6 August 2017, showing these payments. He says he received these statements.

On 31 July and 1 August 2017, someone paid £25 and £20 respectively towards the credit card balance to cover the minimum payment.

On 6 September 2017, NewDay phoned Mr S as he hadn't made a payment that month. He ordered a new card, saying he'd lost the previous one. He said he'd missed his payment because he hadn't seen his latest statement and would make a payment on 8 September – which he did. Though on 8 September, he said he'd missed the payment due to banking issues rather than because he'd not seen the statement.

On 12 September 2017, Mr S called to check he was up to date with his payments.

On 14 September 2017, Mr S phoned NewDay to say he hadn't made the transactions on his account. According to the call notes, he said he'd received the PIN and had memorised it and destroyed the paperwork, but never received the first card. He didn't record his PIN or tell it to anyone. He confirmed he had seen his August statement, and so was aware of the payments, but couldn't give a reason for not contacting NewDay earlier.

NewDay held Mr S liable for the payments. They couldn't see how someone would've learned his PIN without his permission. They listened to the call on 31 May 2017 and thought it was Mr S who had called to confirm he'd tried to make a large payment to the retail store. They questioned why Mr S waited so long to report the transactions, and why he had made payments towards the balance if he'd never spent on the card.

Mr S came to our service. He clarified that he later found his card and had it with him, so it was not lost after all. He kept it in an envelope in a cupboard in his locked room, which only he had the key for. He suspected a housemate could have accessed his room using a screwdriver. He said he rarely interacts with his four housemates and they didn't even know each others' names. He said he actually received the first card, but not the PIN, and never knew what the PIN was.

Mr S said he was too ill to have travelled to the store to make the payment. He also said he was travelling abroad to visit family at the time of the transactions. He provided evidence of his purchased flights, departing on 26 June and returning on 11 August 2017.

In July 2019, Mr S's representatives said he had in fact never applied for the card in the first place, did not set up the online servicing account, and did not make the initial repayments of 31 July and 1 August 2017 online. They said Mr S was not computer literate.

Our investigator looked into things independently and didn't uphold the complaint. He said Mr S's new testimony contradicted what he'd said before, and it didn't seem likely he'd keep a card or make payments towards it if he'd never applied for it or spent on it. And the application data matched Mr S's. He felt there was no likely way someone could have taken and replaced the card and learned the PIN without Mr S's permission. He thought it was more likely that Mr S made the payments or authorised someone else to make them for him, even if he wasn't there himself.

Mr S's representatives disagreed with our investigator, so the complaint's been passed 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.

Having done that, I've come to broadly the same conclusions as our investigator, and for much the same reasons.

#### *did Mr S open this account?*

The card was applied for using information such as Mr S's correct full name, date of birth, phone numbers, and budget information including his correct amount of rent. NewDay then checked this information with credit reference agencies. There was an email address registered to the account that was based on Mr S's name. Mr S says the email isn't his, though there's no way for me to verify whether it's his or not.

It is possible that Mr S's identity was stolen. But it seems unlikely to have been an unknown party, as it isn't plausible that they could've accessed Mr S's house and room to take his cards on multiple occasions. Nor is it plausible that they'd wait so long to use the cards, or that they'd help Mr S to pay off the debt. It also seems unlikely this was Mr S's housemate as he suggested, as if they didn't even know each other's names, it's difficult to see how they reasonably knew all of Mr S's other details.

Mr S has confirmed he received both cards when they were sent out. And each card was then activated shortly afterwards by someone contacting NewDay. It seems unlikely that a fraudster would activate the cards if they never managed to intercept them before they reached Mr S. And it's difficult to see why Mr S would activate each card if he never applied for them in the first place. It's more likely that Mr S activated the cards because he applied for them.

As of July 2019, Mr S says he never applied for this account. But this contradicts what he said before. Throughout Mr S's complaint, he and his representatives referred to the account and cards as belonging to Mr S. In their opening letter to our service of 1 May 2018, his representatives even say "*Mr [S] set up [this] credit card from NewDay Limited at some point before July 2017.*"

Indeed, until July 2019 Mr S only disputed the transactions – I can see no previous mention of Mr S disputing the actual application for the card. If this card was taken out fraudulently by someone else, I can't see why Mr S would wait for over two years to say so, or why he'd repeatedly refer to it as being his own up to that point. I appreciate that Mr S may have had some trouble expressing himself in English, but his testimony contradicts itself so clearly that I don't think that's a reasonable explanation. And his representatives are an English firm.

It seems implausible that someone would keep the cards if they were taken out fraudulently, and that they would not report the fraud once they realised someone had opened an account in their name. Mr S now says NewDay phoned him to check he'd received the card, and that at that point he told them he hadn't applied for it. But there is no record or evidence of that call, and it isn't standard practice to phone customers to check they've received their card. And it's difficult to see why he wouldn't have mentioned the fraud again for over two years.

Overall, I think it's most likely that Mr S opened the account, like his representatives originally said he did.

*can NewDay hold Mr S liable for the disputed transactions?*

Broadly, NewDay can hold Mr S liable for the payments in dispute if the evidence suggests it's most likely he authorised them or gave someone else permission to make them.

I'm satisfied from NewDay's technical evidence that the person making the payments used Mr S's genuine card and the correct PIN. This is not enough, on its own, for NewDay to hold Mr S liable. So I also need to think about whether the evidence suggests that it's most likely Mr S consented to the payments or not.

Having carefully considered everything that both sides have said and provided, I don't think it's unreasonable for NewDay to conclude that Mr S authorised the transactions.

If we take Mr S's initial testimony to be true – that he received his PIN, but not the first card – then it would not have been possible for someone to make the transactions without his permission. Mr S originally said he destroyed the PIN slip, and didn't record his PIN or tell it to anyone. No additional PIN slips were sent. And no one could have observed Mr S entering his PIN, since he never used the card before the disputed transactions started.

However, after his initial complaint to NewDay, Mr S has repeatedly said that he received both cards, but not the PIN – so I've also considered whether it's likely someone made the transactions without his permission on that basis.

I think it's unlikely that an unknown party made the transactions. There were two attempted payments on the first card in May 2017, then two successful payments on the second card in June 2017. As I said above, it's not plausible that an unknown fraudster would've been able to access Mr S's property and his separately locked room on multiple occasions to steal both cards. And I can't see why an unknown party would risk being caught in order to return Mr S's card to him.

The account was opened on 26 April 2017, but the first card wasn't activated until 5 May 2017. It wasn't then used until 10 May 2017. Then the person using the card didn't unblock it until 31 May 2017. They waited until 7 June 2017 to activate the second card. Then they waited until 30 June 2017 to use it again. If an unknown fraudster was trying to use this account, I might have expected them to act as quickly as possible before the fraud was reported, and not to wait so long and risk being caught.

Further, Mr S says that the online repayments towards the card were not made by him on 31 July and 1 August 2017. His representatives say he had trouble using computers. I tried to get the details for where the online repayments came from, but the payment details aren't still available. In any case, I don't think it's likely that a fraudster would pay towards Mr S's balance for him.

I accept that it's possible someone known to Mr S may have done this without his permission, such as someone he lived with. But I don't think it's likely. It doesn't seem likely that they could have broken into Mr S's locked room on multiple occasions to repeatedly take and replace each card without him or any other housemates noticing. And again, it's difficult to see why they would go to such effort to defraud Mr S, but then make repayments to his card for him.

Mr S also confirmed he made payments towards the debt himself, at least starting from September 2017. I appreciate that Mr S may have been worried about how a default could affect him. But he started paying off the debt – and even phoned to check he was up to date with it – *before* reporting it as fraudulent. This seems very unusual: if the debt were fraudulent, one would've expected Mr S to say so first, or to have at least mentioned it, and then to have only paid towards it if his fraud claim wasn't accepted. According to the collections team's notes, when they rang Mr S on 6 September 2017 he agreed to make a payment and simply said he hadn't got his latest statement. But as Mr S is alleging that he never made any transactions on his card whatsoever, it seems strange that he'd agree to pay any balance at all – I would've thought he'd be surprised to learn there was a balance, and would at least have queried it at the time.

Mr S has also confirmed that he received his July and August statements and was aware of at least the £1,900 transaction. But he didn't tell NewDay that anything was wrong until 14 September 2017. It seems unlikely that Mr S would wait so long to report the disputed payments if they were made without his permission.

According to NewDay's contact notes, the person who phoned them on 31 May 2017 did so from Mr S's number – the same number he gave our service. He was able to pass security to be identified as Mr S. And NewDay say that in order to unblock the account, the caller would've had to answer additional security questions. There isn't still a recording of the call, because of all the time that's passed. But back in 2017, NewDay's fraud team spoke to Mr S and also listened to the call of 31 May 2017. They felt it was Mr S who had made that call. And the person who called in confirmed they had tried to make the declined £2,124.15 payment to the retail store on 10 May 2017 – the same retail store that the successful £1,900 payment was made to on 30 June 2017. This indicates that Mr S was aware of the account activity, and indicates he was trying to make a large purchase at the retail store.

I appreciate why Mr S's representatives would now like to see CCTV footage. But according to the store, the footage is only kept for 30 days. So by the time Mr S reported the transactions, it would've already been gone. And we're now over two years on.

I've also taken into account their points that Mr S was either not realistically able to travel to the store, or that he was travelling abroad at the time. But even if I accept that Mr S was not present at the transactions, it was still possible for him to have given someone else permission to make the purchases for him. And I'm afraid that all the evidence I went through above points to this being a more likely and plausible possibility than the transactions being unauthorised.

In summary, I don't think it's plausible that an unknown person applied for this account or made the payments. Nor do I think it's likely that someone known to Mr S did this without his permission. I think it's more likely that Mr S opened the account and either made the payments or authorised someone else to make them. This is a difficult message for me to give, and I know it will be a difficult message for Mr S to receive. But given the evidence I have, I'm unable to reasonably reach any other conclusion.

So based on everything I've seen, I think it's fair for NewDay to hold Mr S liable for these transactions, because I think it's more likely than not that he made or authorised them.

### **my final decision**

For the reasons I've explained, I don't uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr S to accept or reject my decision before 24 January 2020.

Adam Charles  
**ombudsman**