

complaint

Mr R complains that NewDay Ltd (trading as Opus) will not refund payments he said he did not make with his credit card.

background

Mr R disputes all the payments made on his credit card in January and February 2016. These were all cash withdrawals and came to over £5,000. He reported this to NewDay when he received his February 2016 statement. He completed a declaration form and the amounts were removed from his account while the matter was being investigated. But NewDay said it did not receive a further form it sent for him to complete. So it re-debited the amounts. Mr R says he did send the form and spoke to NewDay several times about this. He is unhappy that he is being held liable for the debt and that a default has been registered.

The adjudicator did not recommend that the complaint be upheld. She said that:

- NewDay said it had sent the further form for Mr R to complete on 4 and 19 April 2016 - it has no record of receiving this.
- Mr R had given specific dates on which he said he spoke to NewDay but it had no contact notes about this. Although Mr R has asked his call provider for an itemised bill he's been unable to identify the calls he made.
- NewDay said that as the payments were made using Mr R's genuine card and his PIN then it did not think that they were fraudulent. It wouldn't be asking Mr R for any further information about this dispute now.
- The adjudicator noted that the debit card was issued on 27 October 2015 and not used until 21 January 2016. She thought it unlikely that someone would have been able to intercept the card and PIN and then would wait three months to use the card.

Mr R did not agree and wanted his complaint to be reviewed. He said that the terms and conditions of the account say that he is not liable if the card is mis-used. He said that he did not receive it and that a fair review has not taken place.

my findings

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

I won't be able to say exactly what happened here. But I will need to decide the most likely explanation.

I agree with the adjudicator that it's highly unlikely that an unknown third party, even if able to intercept Mr R's new card and PIN advice in the post, would have waited so long to use it. I've seen evidence about all the payments which confirms that they were made using the genuine card and PIN. For some reason attempts at withdrawals stopped after 12 February 2016. This was even though there were still available funds on the account and the card was not blocked until Mr R contacted NewDay on 4 March 2016. Taking all this information together I don't think that this is a pattern of withdrawals consistent with use by a fraudster. So on balance I'm unable to conclude that the most likely explanation is that these withdrawals were made without Mr R's knowledge and authority.

Having made this finding the question of whether Mr R returned the forms or not does not have any bearing on the refund of these payments. Mr R was very specific in the dates he

said he called NewDay. I'm not clear what he based this on and unfortunately he has been unable to show he did call on those days. NewDay has no record of any calls or contact at this time. There's insufficient evidence for me to decide that it provided poor customer service.

I'm afraid that I don't find NewDay has acted unfairly and I won't be asking it to do any more.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 17 February 2017.

Michael Crewe
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