

complaint

Miss D complains about some disputed transactions on her account and the subsequent service received from NewDay Limited.

background

In July 2015, having been requested by Miss D, NewDay sent a new card and PIN to Miss D. But Miss D says that these were never received. The subsequent transactions which were carried out over a period of approximately six days were not hers and neither were they authorised by her.

When Miss D complained to NewDay, it told her that it would not be refunding the transactions but it did acknowledge that its customer service fell short. For this, it offered her £150.

When she bought her complaint to this service, our adjudicator looked into matters for her. But she told Miss D that she would not be asking NewDay to do anymore. This was because she (the adjudicator) could not be satisfied that the items had been intercepted and thus, that the transactions were unauthorised.

But Miss D did not agree. In her further submissions, she relied on a separate complaint bought against another business under identical circumstances. This complaint had been resolved in Miss D's favour. This, said Miss D, was a precedent which this service should follow when making a decision on this complaint.

my findings

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

In doing so, I have asked myself the following pertinent questions:

is the outcome of Miss D's other complaint relevant?

I am afraid that it is not. Each case is looked at individually and assessed according to the evidence in that particular case. My statutory obligation is to consider what is fair and reasonable in the circumstances of this case.

Of course, I can take into account the facts of the separate complaint

does the issue of credit tokens apply to this complaint?

No it does not. Miss D quotes certain sections of the Consumer Credit Act 1974 because she says that she should not be held liable for the loss if the misuse was on a credit card as opposed to a bank account. I am afraid that the sections which she quotes are only applicable when considering the issue of *negligence* on behalf of a consumer – not *authority*. As the latter is the consideration here, credit tokens (and the sections of the lending code which she quotes) are irrelevant.

can I be satisfied that the transactions were not authorised?

I am afraid that I cannot be satisfied to the required standard that they were not authorised.

The use of the credit card isn't consistent with how I'd expect a fraudster act. If they'd got hold of a card, I would expect them to maximise the use of the card over a very short period of time. The card may have been used over a short period of time but not to its limit and the usage stopped before NewDay were alerted.

I can't rule out the possibility that Miss D carried out the spending herself. But I acknowledge she's adamant she didn't. So the next most likely possibility is that somebody close to Miss D used her card. I realise both of these are difficult messages to give. But it's what the available evidence points me towards.

And I have to remind myself that the spending on her account was carried out in her local area.

should NewDay be asked to increase its award for the poor level of service?

I have listened to the calls between Miss D and the representative from the fraud department. I do think that these calls could have been handled better but I also think that the offer of £150 which has been made is fair and reasonable. In its response to Miss D, NewDay accepted its poor handling of the complaint so I do not think that it would be fair to ask it to do anymore.

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 D to accept or reject my decision before 25 May 2016.

Shazia Ahmed
ombudsman