

Complaint

Ms D has complained that NewDay Ltd won't refund transactions from her account, which she says she didn't make.

Background

Ms D has an Aqua credit card with NewDay.

On 24 April 2017, Ms D raised a complaint with NewDay about five unauthorised transactions from her account. They are set out in the table below.

date	merchant	amount	outcome
10 April 2017	eDarling	134.85	
10 April 2017	Match	39.99	
13 April 2017	Match	74.97	
14 April	Maturedating.com	9.99 14.99	Refunded by merchant on 16 April 2017

The payments were made via the merchants' websites with her credit card details.

Ms D asked NewDay for a refund. It agreed to raise a chargeback with the merchants. It sent her a form to complete, as part of the chargeback process. On 21 July 2017, she contacted NewDay and told it that she'd returned the form. However, NewDay hadn't received it and so it sent her a replacement form.

NewDay didn't receive the replacement form and, by the time Ms D contacted it again, the time limit for raising a chargeback had expired. It refused to refund her and told her to pursue the merchants directly.

Ms D wasn't happy with this outcome so she brought her complaint to this service. She says the payments are fraudulent and she didn't make them.

An adjudicator looked into the case and decided that there was nothing more NewDay could do without the form.

Ms D didn't agree with the adjudicator's view. She has asked for an ombudsman's final decision.

my findings

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

When considering what is fair and reasonable, I am required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

relevant considerations

Ms D says she didn't make the disputed transactions and they are fraudulent. They are, therefore, unauthorised transactions.

The disputed transactions took place in July 2017, so of particular relevance to my decision about what is fair and reasonable in the circumstances of this complaint, are the Payment Services Regulations 2009 (the PSRs 2009) which apply to unauthorised or fraudulent payments.

The regulations explain that a payment out of someone's account can only be authorised if the payer has consented to it. The payment service provider must show the payment was authenticated. This means it must show it was verified by its procedures, including its personalised security features.

Whether a payment has been authorised or not is important because account holders will be liable for payments they've authorised and, generally speaking, banks will be liable for unauthorised payments. But accountholders can become liable for unauthorised payments when they haven't met certain obligations. These obligations are set out in Regulation 57 of PSRs 2009.

So my task is to decide whether I think Ms D authorised the transactions.

As I've explained, under the regulations, New Day must show that the payments were authenticated. I've seen NewDay's audit log for all transactions on Ms D's credit card. The log confirms that the credit card and CVV numbers were provided to make these transactions.

Based on this evidence, I'm satisfied that the payments were authenticated.

The use of Ms D's credit card details links her to the payments. However, she says she didn't make them. I infer from this that she believes an unknown third party made the transactions.

Yet, Ms D still had her credit card with her when she called to complain about the transactions. She didn't report it lost or stolen. And, according to the audit log, she continued to use the same credit card until 15 September 2017 when she started using another card. Furthermore, she hasn't explained how anyone else could have got her card.

Also, I note that the payments to Matedating.com were refunded directly by the merchant on 16 April, before she'd raised a complaint with NewDay. This suggests that she knew about that transaction and had contacted the merchant directly. Of course, it doesn't automatically follow that she knew about the other payments but it's an odd coincidence that there is one genuine to payment to a dating website amongst three disputed ones.

Based on the evidence, I think it's more likely than not that Ms D authorised the disputed payments. I'm afraid this means that NewDay is not obliged to refund them.

I'm sorry this will be disappointing news for Ms D but I hope the reasons for my decision are clear. I apologise for the length of time she has been waiting for this decision and I thank her for her patience.

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 Ms D to accept or reject my decision before 3 January 2020.

Razia Karim
ombudsman