

complaint

Mrs Y complains that NewDay Ltd won't refund a payment made using her credit card details. She says she neither made nor authorised the payment.

background

Mrs Y has explained that, in November 2017, her husband's eBay account was used to buy an iPad costing £299. Payment for the iPad was made through PayPal, as is common for eBay transactions. It appears that Mr Y's PayPal account is linked to Mrs Y's credit card, and so the credit card payment was made to PayPal to be passed to the seller.

A few weeks after the purchase, eBay contacted Mr Y to tell him that it appeared his account had been compromised. It had identified changes in the pattern of account usage and that a different device had been used on the account. In an email to Mr Y eBay said it had notified the seller, but that he might nevertheless receive the item. That would depend on whether the person who had compromised the account was able to change the delivery address.

In the event, Mrs Y says, her husband did receive the iPad; it was sent to the address linked to the eBay account. At that point, therefore, Mrs Y's NewDay account had been debited with £299 and her husband had received an iPad he hadn't wanted, but for the price the seller had advertised.

NewDay tried to recover the payment from PayPal, through the chargeback process – a process by which disputed card payments can be resolved through the card schemes. That wasn't successful, however, mainly it seems because the seller was able to demonstrate that the iPad had been delivered to the address linked to the eBay account (and of course to the credit card).

NewDay didn't agree to make a refund. It relied largely on the outcome of the chargeback request, pointing out that Mrs Y had had the benefit of the item purchased using her credit card through the payment to PayPal.

Mrs Y referred the matter to this service. She explained that she and her husband had been able to sell the iPad for £150, reducing her loss to £149. But she still thought NewDay should meet that loss. One of our investigators considered what had happened. He accepted Mrs Y's account of events and recommended that NewDay pay her £149 to resolve her complaint. NewDay didn't accept that recommendation, however, and asked that an ombudsman review the case.

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 have however reached broadly the same conclusions as the investigator, and for similar reasons.

As a general principle, a credit card issuer such as NewDay shouldn't hold its customer liable for transactions that the customer hasn't made themselves or authorised someone else to make on their behalf. There can be exceptions, of course – for example, where the cardholder has allowed someone else to take possession of the card – but I don't believe any of those apply here. Mrs Y had allowed Mr Y to link her card to his PayPal account, but that would be relevant only if he had authorised the payment to PayPal.

The first issue I must consider therefore is whether Mrs Y or her husband authorised the payment. I believe there's strong evidence that they didn't. Specifically, eBay contacted Mr Y to tell him that his account had been compromised. Its communication with him didn't simply identify an attempt to use his account; it identified the specific transaction which was linked to the PayPal payment and by extension to the credit card payment.

I'm satisfied therefore that the payment of £299 to PayPal wasn't authorised; it was made without Mrs Y's consent. Unless there's a good reason, therefore, Mrs Y ought to have that payment refunded.

As I've explained, both PayPal and NewDay said that Mrs Y benefited from the payment because the iPad was delivered. Had a chargeback been successful, it's likely that the seller's own PayPal account would have been debited; that would of course have been unfair, since they had sent the iPad to Mr Y in the belief he had agreed to buy it. I note too that, strictly speaking, Mrs Y didn't benefit from the payment; Mr Y did, because he was the buyer through eBay. I don't believe anything turns on that point, however, and I regard the receipt of the iPad as being of some benefit to both Mr and Mrs Y.

I don't believe however that the delivery of the item purchased using Mrs Y's credit card is a reason to treat the transaction in the same way as if she (or Mr Y) had consciously bought it themselves. In truth, Mrs Y's card was used to buy an item she didn't want for a price she hadn't agreed.

The relevance of the delivery of the item is that it reduced Mrs Y's losses. It would of course be unfair for her to keep the iPad and have a full refund. But she's not seeking that. Rather, she explained that she was able to sell it, albeit for a much lower price than she paid - £150. I'm satisfied that she did that and in doing so took reasonable steps to reduce her losses; I'm not persuaded that she could have reasonably obtained more. Given the circumstances in which Mrs Y and her husband obtained the iPad, I can see too that returning it to the seller wasn't an option. Having sold it through other channels, however, Mrs Y is still £149 out of pocket as a result of the unauthorised payment to PayPal.

For these reasons, I agree with the investigator that a payment to Mrs Y – representing her net loss from the unauthorised payment – is a fair settlement in this case.

my final decision

My final decision is that, in order to resolve Mrs Y's complaint, NewDay Ltd should pay Mrs Y £149.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Y to accept or reject my decision before 7 June 2020.

Michael Ingram
ombudsman