

## **complaint**

Mrs S complains that NewDay Ltd has held her liable for a transaction on her account, made abroad on 15 February 2016.

Mrs S says she didn't make or authorise the transaction but NewDay has refused to refund its value to Mrs S' account.

## **background**

When Mrs S was abroad, she withdrew about £50, in the local foreign currency, from her account with another bank. She says she placed this in her pocket and the card back into her purse. Mrs S recalls that during this time, there appeared to be a large crowd of people near the cash machine.

Following this, Mrs S says her purse was stolen from her bag. Then, there were subsequent withdrawals made from accounts she held with a number of banks (or the like), using different cards. Mrs S says her personal identification number ("PIN") for all her accounts was the same. And a fraudster was able to make those transactions, having stolen the purse, gained access to all the cards, and seen the PIN being entered.

NewDay refused to refund the disputed transaction. There were no balance enquiries carried out prior to the withdrawals and there were no failed PIN attempts. The fraudster waited over an hour before using the card, which seemed unlikely.

Our adjudicator didn't consider that she could recommend NewDay refund, to Mrs S, the value of the disputed transaction. She had noted that whoever made the disputed transaction had not checked the available balance on the account before they started using the card. She accepted that it couldn't be assumed that a fraudster would have been able to check the balance on the account by using the card, in a machine, in the location concerned.

However, the adjudicator took note of the wider circumstances in which it's claimed that the disputed transaction took place on this account and on the other accounts, all with different banks. She also noted the historical use of all the accounts and the nature and value of the recent transactions across them, as well as how the fraud claim was presented.

She noted what the first transaction was in each case; the timing of the disputed transactions and notifications of fraud; and she considered the likelihood of this disputed transaction having taken place as a result of a fraudster obtaining the card and PIN, rather than Mrs S having either made it or authorised it.

And the adjudicator considered the latter more likely.

## **my findings**

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

Mrs S has asked for her complaint to be reviewed. She has restated that balance enquiries couldn't have been made; she disputes what the bank has said about the distance between where the card is said to have been taken and the disputed transactions made; and she reminded the adjudicator that further attempts to use cards after fraud was reported to the banks by her suggests that a fraudster was involved.

I've taken into account all that Mrs S has said. But I've also taken into account the same considerations, as I've detailed previously, as the adjudicator – specifically, the wider circumstances surrounding the fraud, across all of Mrs S' accounts; and the pattern and nature of the disputed transactions.

And I don't consider I can fairly and reasonably conclude that NewDay has acted incorrectly here. I consider that Mrs S hasn't been able to demonstrate that NewDay is wrong in holding her liable for the disputed transaction, on the basis that it's more likely than not that a fraudster carried out the transactions than they were made or authorised by her.

I've noted the upset that Mrs S is suffering as a result of her not receiving a refund of the value of the transaction. And I'm very sorry to learn of her distress and concern. But I'm afraid that I don't consider I can fairly and reasonably decide that the bank should act as Mrs S is asking me to require it to.

### **my final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 23 September 2016.

Ray Neighbour  
**ombudsman**