

complaint

Mr T complains that NewDay Ltd won't refund payments made on his credit cards that he says he didn't authorise.

background

Mr T has two credit cards with NewDay. In August and September 2018, payments were made from these accounts to two gambling companies. The total value of the payments was £1971.09 and they were made online. Mr T says that he didn't make or authorise them. He says he initially noticed these payments when he received his October statement.

He notified NewDay. He said that, although he'd made payments to these websites in the past, he hadn't done so since July 2018. NewDay investigated and wrote to Mr T saying that *"the payments that you have disputed on your account have indeed been verified as genuine, therefore, we are not in a position to reverse them."*

NewDay was satisfied that the payments were carried out by Mr T because the device from which they were made had the same IP address as was used for previous payments which Mr T says *were* authorised. In addition to rejecting Mr T's complaint, NewDay recorded information with CIFAS.

Mr T wasn't happy with NewDay's response and so he referred the complaint to this service. He told an investigator that his phone was lost or stolen in August. He said it wasn't password protected and that it contained photos of his credit cards. He also told us that his card details and gambling site log-in details would've been stored on the phone.

The investigator didn't uphold the complaint. In a subsequent conversation with the investigator, Mr T recalled that his friend's son had stayed with him for approximately three months and that he'd borrowed Mr T's phone during this period. Mr T used an alternative phone. He speculated that his friend's son would've had all the necessary information on the phone to be allow him to place bets using Mr T's accounts. He told the investigator that it was his friend's son who had lost the phone, not him as he'd originally said.

The investigator said that it was more likely than not that Mr T had authorised these payments. But she didn't think NewDay had strong enough evidence to justify recording a CIFAS marker against Mr T's name. NewDay disagreed with the investigator's opinion and so the complaint was passed to me to consider.

I issued my provisional findings on 5 December 2019 which said:

were the payments authorised?

The basic position is that NewDay can hold Mr T liable for the disputed payments if the evidence suggests it's more likely than not that he made them or authorised them. I've carefully considered the evidence that's been provided by both sides and I'm persuaded NewDay is reasonable in holding Mr T liable for the payments.

I say that because:

- NewDay has provided evidence showing that there was repeated access to Mr T's mobile banking facility throughout the period of disputed activity. And NewDay's evidence shows access was granted following 'biometric' validation (I understand access was granted using fingerprint recognition). Mr T didn't raise any concerns about these payments until October 2018. If he hadn't authorised*

them, I'd have expected him to have alerted the business much sooner than he did.

- NewDay has provided evidence from one of the gambling companies showing a transaction which Mr T accepts he authorised was carried out via the same IP address as each of the payments which he disputes.*
- Each payment was made in connection with Mr T's online gambling accounts. Evidence provided by those gambling companies suggests that a confirmation email would be sent to the email address connected with the account each time a bet was placed. This would've meant Mr T received 84 emails in total. He says he was making active use of his email account at the time, but he didn't see any of these emails. Given the volume of payments, I think it's unlikely that he wouldn't have noticed at least one of these notification emails.*
- Mr T has placed bets online before and told the business that he had placed bets with one of these gambling companies when he reported the payments – so these aren't unusual or out of character. Furthermore, it's unclear why a purported fraudster would place bets on Mr T's behalf. They wouldn't obtain any direct financial benefit from doing so given that any winnings would be paid back to Mr T's account. In fact, I've seen evidence that £50 of winnings being paid into Mr T's account on 21 September 2018.*

Overall, I find it reasonable for NewDay to hold Mr T liable for these payments because the evidence suggests it's more likely than not that he authorised them.

CIFAS marker

NewDay says it recorded a CIFAS marker against Mr T's name. It says he misused his account by making a false fraud claim. I need to consider whether it was fair for NewDay to apply that marker, based on the evidence it had and the investigation it carried out. I've also taken into account what the relevant rules say about when CIFAS markers can be applied.

Having done so, I'm satisfied that NewDay has sufficient evidence to justify recording a CIFAS marker. I say that because Mr T's explanation of the events surrounding these payments has changed throughout the life of the complaint. When he first notified NewDay of his concerns, he confidently said that payments to one of the gambling companies were made by him only to change his mind when he identified the specific payments he wanted NewDay to look into. He also told the investigator that his phone had been lost or stolen and later told us that this didn't happen. He also said that he thinks his friend's son must have accessed his online banking even though NewDay's evidence shows that this access was granted following a 'biometric' log-in and Mr T says he typically accesses his online banking with fingerprint recognition.

These inconsistencies make it exceptionally difficult to give much weight to Mr T's version of events. There is strong evidence that Mr T's account of events isn't accurate and that he was responsible for these payments but told NewDay that he wasn't. In the circumstances, I think it was reasonable for it to record a CIFAS marker in the way it did.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. NewDay didn't respond to my provisional findings. Mr T responded and made the following arguments:

He said he didn't authorise the single gambling transaction that I referred to in my provisional decision. He says he simply got mixed up over the details. But even if I was willing to accept that he might have had his recollections mixed up, I still think the weight of the evidence supports NewDay's decision to record the CIFAS marker.

He said that, before he went away, he set up fingerprint recognition on the phone so that his friend's son could use it. He says this would've given him access to his online banking facility. But the evidence NewDay has provided says that the access to online banking was subject to fingerprint authentication – mere access to the phone wouldn't have been enough to allow his friend's son to be accessing Mr T's online banking on his behalf.

He said he didn't receive any emails from the gambling sites – that he's checked his inbox and can't find any. But the information I've been provided says that it would be its normal process to send a confirmation email following each bet placed. I think the likelihood that these emails weren't sent to confirm any of the bets is very low.

Finally, Mr T has said that the bets were placed by his friend's son because he wanted to win some money to thank Mr T for allowing him to stay at his home. I've considered this point carefully but it doesn't persuade me to change my decision that Mr T told NewDay that he wasn't responsible for payments that were most likely made by him.

my final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 20 February 2020.

James Kimmitt
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