

complaint

Mrs K complains that NewDay Cards Limited is requiring her to repay the outstanding debt on a Debenhams credit card. She says she did not use the credit card and is not liable for the debt.

Mrs K is represented in her complaint by her daughter, Ms D.

background

Mrs K applied for a Debenhams credit card in May 2014, and a transaction of £20.14 was debited to the account on the same day. She says that she did not subsequently receive the card or any statements/correspondence on the card account until November 2014, when she started receiving repayment demands. She suspects that the card was intercepted and used by her son, who had by November 2014 left her house. She reported the matter to the Police, who said that they would not investigate it as it was NewDay that has been defrauded and not Mrs K.

NewDay does not accept that there has been fraud on the account because there has been no Police investigation.

Our adjudicator recommended that the complaint should be upheld. She concluded, in summary, that it was not reasonable for NewDay to hold Mrs K responsible for any transaction on the credit card account other than the initial £20.14.

NewDay did not accept the adjudicator's view. It said, in summary, that it would not accept that the transactions on Mrs K's account were fraudulent because she had refused to take matters further with the Police.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I find Mrs K's evidence persuasive. I am satisfied that, other than the initial £20.14 item, she did not use or authorise someone else to use the card. She did report the matter to the Police, and has provided a crime reference number.

It is for the Police to decide whether they are prepared to carry out an investigation. They have said that they will co-operate with NewDay if it makes its own fraud complaint. I do not consider there is any responsibility on Mrs K to press the Police to take any further action.

The account is subject to the Consumer Credit Act. Among other things, the Act says that a debtor isn't liable for loss arising from use of a credit card by someone else, unless they're acting as the debtor's agent. In other words, if Mrs K didn't use – or allow her son to use – the card, she's not responsible for repayment¹. The Act makes no requirement of a debtor to report an incident to the Police for this to apply.

¹ Section 84(1) of the Act entitles the creditor in certain circumstances to make the debtor liable for up to £50. I don't think the circumstances in Section 84(1) apply here; as far as I can establish, the card was never in Mrs K's possession.

NewDay is - or certainly should be - aware of this. I find its stance likely to have caused unnecessary concern and trouble to Mrs K, at what would undoubtedly be a difficult time for her. I think it fair that NewDay recognise this by paying Mrs K compensation of £150.

As I've said, I've concluded that Mrs K neither made, nor allowed anyone else to make, the disputed transactions. So NewDay cannot require Mrs K to repay the outstanding debt on the card account, other than the initial £20.14 transaction. It is also inappropriate for it to record the unpaid debt on Mrs K's credit file.

my final decision

For the reasons given above, my final decision is that I uphold this complaint. In full and final settlement I order NewDay Cards Limited:

1. not to hold Mrs K responsible for any outstanding debt other than the initial £20.14 transaction, and interest thereon;
2. to remove any related negative credit information from Mrs K's credit file; and
3. to pay Mrs K £150 for her trouble and upset.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs K to accept or reject my decision before 29 July 2015.

Malcolm Rogers
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