

## complaint

Mr M complains that NewDay Ltd is holding him responsible for the borrowing on a credit card account he says he didn't apply for.

## background

The application for the credit card was made on 30 March 2018 and a card and PIN sent out. On 18 April 2018 Mr M contacted NewDay to say he had received a PIN notification letter and didn't know why. The card had been used the day before to take out £300 in cash. Mr M said he hadn't applied for the card and had not made the withdrawal.

NewDay didn't accept that Mr M hadn't made the application. It said that it based this on "*the depth of personal information provided when the account was opened*". It registered a default and is pursuing him for the debt which now included charges and interest.

Our investigator recommended that the complaint be upheld. She said that:

- The mobile phone number and email address used in the application didn't match the ones Mr M provided to this service.
- The card and PIN were sent out following a request on 30 March 2018 and no checks were carried out by NewDay to verify the identity of the person making the request.
- Mr M had explained he lived with family members and all post was put into a tray. The letter with the PIN had been opened and the tab pulled back to reveal it.
- There was a clear point of compromise and NewDay hadn't provided evidence to show that Mr M had authorised the withdrawal.
- She said that NewDay should refund all the borrowing and the interest and charges applied, remove any information about this card and payment history reported on his credit file and pay him £150 for the distress and inconvenience caused by pursuing him for this debt.

NewDay didn't agree. It said that when Mr M reported this in April 2018 he had told it he lived with family but not that he had any suspicions a family member may have been involved. It would expect a genuine victim of fraud to maintain a consistent account. Mr M had also not told it that the tab had been pulled back on the letter to reveal the PIN. It wasn't likely a fraudster would leave it like this. The fraud team had confirmed that the number he gave for his employer on the application was genuine and it was possible that NewDay might call that number and it didn't think a fraudster would provide this.

## 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 need to consider what I think is *most likely* and I won't be able to say *exactly* what happened. I'll be looking at the way in which this account was opened. And taking into account the evidence about how the withdrawal was made.

Our investigator has identified some discrepancies in the application but I understand that the majority of the information was that for Mr M including his home number. NewDay has not wanted to explain to this service what verification checks it made to confirm it was him applying for the card. I think it possible that someone close to him would have all this information and have been able to impersonate him.

NewDay doesn't have recordings of its calls with Mr M at the time he reported the fraud. I appreciate it doesn't routinely keep calls beyond 12 months but here Mr M had complained and it issued several final response letters and knew by July 2018 that he was going to be referring his complaint to this service. I have its call note but I can't resolve exactly what was said and what he was asked. If I was to accept that this was a fraudulent application I don't see how Mr M's explanation could have other than been that someone had looked at the PIN. And a suspicion that someone close to him may have carried this out could have developed over time when he'd thought through what happened. To me the fact that on his account a fraudster would leave the envelope for him to see in the first place is odd in itself but that has been Mr M's consistent explanation.

NewDay has confirmed to the investigator that the card and PIN would have been sent out separately within 10 days of the application. The card was activated online. And there is a record on the evening of 16 April 2018 of an email from the person with access to the account saying that the PIN hadn't been received. Although another PIN was ordered it doesn't seem that this could possibly have been received by the time of the withdrawal at 14:10 the next day ( based on the authorisation log).If this was a withdrawal by a fraudster I can only work on the basis that the PIN was soon in that person's possession. And that's consistent with that person taking out all the money available on the account – the limit being £300 - as quickly as possible.

I need to balance all the evidence in reaching my decision about what is most likely. That doesn't mean it's the only explanation. And here there are two broad possibilities – either Mr M applied for this card and took out the money or someone close to him did without his knowledge. This is a case where these are both likely in my view. With that in mind I take into account what I have said about the verification of his identity, that there is a plausible explanation for someone else taking out this card and that it's up to NewDay to show that not only was the withdrawal authenticated using the card and PIN but that Mr M consented to it. On balance it hasn't satisfied me with its evidence in these areas.

For these reasons I find that Mr M shouldn't be held responsible for this card and the related borrowing. I agree with the resolution suggested by the investigator but clarify that in addition as NewDay said it had recorded a fraud marker at CIFAS, the national fraud database, that this must also be completely removed whether or not the current marker is still live. The award for distress and inconvenience reflects the collections activity that I've seen evidence of continuing after Mr M had reported the fraud.

**my final decision**

My decision is that I uphold this complaint and require NewDay Ltd to:

- 1) Refund all borrowing and interest and charges and remove any record of this account being applied for or held in Mr M's name.
- 2) Remove any information about this borrowing in Mr M's name reported to credit reference agencies and CIFAS.
- 3) Pay not credit Mr M with £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 March 2020.

Michael Crewe  
**ombudsman**