

Complaint

Mr W has complained that NewDay Ltd won't refund cash withdrawals, which he says he didn't make.

Background

Mr W has an Aqua credit card account with NewDay.

On 22 January 2018, he complained to NewDay about three ATM cash withdrawals which he didn't recognise. The transactions were made on:-

17/01/2018	10:57	£300.00
18/01/2018	07:53	£300.00
20/01/2018	07:41	£200.00

The ATMs were in his hometown. There was one genuine transaction on 17 January 2018 at 11.31 for £6.14. This was a card payment at a petrol station, located within half an hour's drive from the ATM used earlier that morning.

Mr W said he didn't make these transactions. He said he only used his card for work expenses, mainly petrol, but not for cash withdrawals. He hadn't lost his card and still had it with him when he reported the disputed transactions to NewDay. And he said he hadn't shared his card or PIN with anyone else.

He said he keeps his card in his wallet and, when at work, he keeps his wallet in an unlocked drawer. He works in a close-knit team and he doesn't believe that any of his colleagues would have taken his card.

He said he was travelling, for work, on 17 January, hence the payment at the petrol station. He said he was alone that day. He said he was in a different county when one of the later transactions was made and he had a parking receipt to prove this.

Mr W said he doesn't know how someone else got hold of his card. He thinks his card must have been cloned.

He asked NewDay for a refund.

NewDay investigated his complaint and decided not to refund him. It is treating him as having authorised the cash withdrawals because they were made with his genuine card and PIN. In addition, it said he hadn't lost his card and he'd made genuine transactions between and after the disputed ones. It advised him to report the fraud to the police and offered to look again at his complaint if he provided it with a crime reference number and the parking receipt.

Mr W wasn't happy with NewDay's decision and so he brought his complaint to this service. He also complained about its poor customer service. He said he wanted to clear the balance on his account, but it told him he should wait until it had resolved his complaint. By waiting, he's incurred interest and charges on the outstanding balance.

An investigator looked into his complaint and decided not to uphold it. He said a cloned card wasn't used because it's not possible to clone the chip in a card. He also felt unable to conclude that the transactions were fraudulent because:

- Mr W's genuine card was used with his PIN
- he hadn't shared his card or PIN with anyone else
- he still had his card with him
- he'd made a genuine transaction in between the disputed ones.

The investigator also concluded that NewDay hadn't advised him against paying off the balance.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, my review of the evidence has led me to the same overall conclusions as those reached by the investigator and for much the same reasons.

As both Mr W and NewDay have seen the investigator's detailed view, I won't repeat all the arguments here in my decision.

Generally, NewDay can hold Mr W liable for the disputed cash withdrawals if the evidence suggests that it's more likely than not that he made or authorised them himself.

I'm satisfied from the bank's technical evidence that Mr W's genuine card and PIN were used to make the disputed transactions and not a cloned card. But the regulations relevant to this case say that is not, on its own, enough to enable NewDay to hold him liable. So, I also need to think about whether the evidence suggests it's more likely than not that Mr W made the cash withdrawals.

From what I've seen, I don't think it's unreasonable for NewDay to conclude that Mr W authorised the transactions. This is because:

- his genuine card and PIN were used to make the cash withdrawals.
- Mr W hadn't lost his card; he still had it with him when he reported the disputed transactions.
- He said the card was always in his possession.
- He hadn't shared his card and PIN with anyone else.
- There was a genuine payment at a petrol station, which was made within 35 minutes of the first disputed cash withdrawal.
- Mr W didn't provide the parking receipt showing he was elsewhere when one of the other cash withdrawals was made, despite saying he had it.

I've considered whether Mr W's card was stolen and used by someone he didn't know but I don't think this is what happened. This is because the person knew the PIN. Yet, Mr W said he hadn't shared it with anyone else or written it down. Also, the evidence indicates that if it wasn't Mr W, then it had to be someone close enough to him who could take his card and return it without him noticing. I think this rules out an unknown third party.

Taking everything into account, I find, on balance, that Mr W authorised the disputed cash withdrawals. It follows that NewDay is entitled to hold him liable for them.

Poor service

I've read NewDay's contact notes. These notes record its conversations with customers. There's no mention of him being told to cease payments until the complaint is resolved but I accept there might have been a misunderstanding.

As it is, the notes record that NewDay told him on 3 February 2018 that it was holding him liable for the cash withdrawals and so it's arguable he knew at that stage that he needed to pay the balance. NewDay said he'd set up a direct debit for the full account balance which was due on 8 February 2018. He made a payment of £150.00 on 7 of February 2018. The full balance of £990.82 was attempted but the payment was returned due to insufficient funds.

Given these circumstances, I'm afraid I don't consider that NewDay has given bad advice.

I'm sorry this will be disappointing news for Mr W, but I hope the reasons for my decision are clear.

My final decision

My final decision is that I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 24 February 2020.

Razia Karim
ombudsman