

Complaint

Mrs C has complained that NewDay Ltd won't refund a payment she made after being scammed.

Background

Mrs C responded to a text message, which appeared to come from Google. It said that as she'd been a longstanding customer, she was eligible to enter into a prize draw for a phone. All she had to do was click on the link provided and pay one euro for the post and packaging.

Mrs C clicked the link. She was then asked to enter her personal details and her card details, which she did. She said NewDay sent her a text immediately asking her to confirm a payment for £47.99. She realised it was a scam and called NewDay. She asked it to cancel the payment. However, it couldn't because the payment was pending.

Mrs C decided to close her account with NewDay and asked it to refund the £47.99. She hadn't received a phone and had paid £47.99 when it was supposed to be one euro.

NewDay made enquiries. The payment was made to a dating website. It appeared that Mrs C had taken out a subscription, albeit unknowingly. NewDay cancelled the subscription so no further payments could be taken. However, it decided not to refund her because she'd authorised the payment.

Mrs C didn't think this was fair so she asked this service to investigate.

An investigator looked into the case but decided not to uphold it. She said this scam is known as a 'pull payment'. However, as Mrs C had authorised the payment, by providing her card details, NewDay wasn't obliged to refund it. And as the merchant was providing a service, there were no grounds for a chargeback.

Mrs C disagreed with the investigator's view. She's asked for an ombudsman's final decision.

My findings

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

When considering what's fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The investigator wrote a detailed view that sets out in full the facts, the transactions, the relevant regulations and the evidence. Both Mrs C and NewDay have read the investigator's view, so I won't repeat every detail here, only those which form the basis of my decision. However, I can assure Mrs C that I've read the file, including her comments and evidence.

Having done so, I'm afraid my review of the evidence has led me to the same overall conclusions as those reached by the investigator and for broadly the same reasons. I'll explain why.

In short, NewDay is required to refund the amount of an unauthorised transaction. The relevant regulations, to this effect, are the Payment Services Regulations 2017 (the PSRs 2017). In this case, Mrs C says she didn't authorise a payment for £47.99 but she admits she entered her card details and consented to a payment of one euro for post and packaging for a potential prize – a phone.

However, under the PSRs 2017, a payment transaction is regarded as having been authorised by the payer if the payer has given consent to the execution of the payment transaction, which Mrs C did, but for one euro. I'm afraid she is still treated as giving consent, even if she were misled or made a mistake about the value, the product, service or the merchant. Where this happens, then her dispute is with the merchant not NewDay. And, the terms and conditions say that NewDay is not obliged to refund a payment where a customer has given consent (paragraph 17.2).

So, I'm afraid that under the relevant regulations and the terms and conditions, NewDay isn't obliged to refund the money.

Another way to recover the payment was for NewDay to raise a chargeback claim. However, this process isn't normally available for fraud or scam payments, which is why NewDay didn't pursue it. But even if it had, the grounds for raising a chargeback are limited and a merchant can defend it if it can show it's providing goods or services. In this case, the website told NewDay it was offering a service to Mrs C but she didn't want it.

Unfortunately, Mrs C didn't keep the text message so there's been no opportunity to see what it said. I believe it offered her the opportunity to enter a prize draw but I don't know if there was any reference, to the dating website, no matter how small, or if there was a promotional advertisement alongside it. Without proof of a misrepresentation, NewDay couldn't do much more. In these circumstances, I think it was reasonable for NewDay not to pursue the chargeback.

Lastly, I agree with the investigator that there was nothing unusual or suspicious about the transaction, which should've alerted NewDay. It was a relatively small amount, a one off payment and not obviously out of character for the account. Also, according to NewDay's records, the account was opened on 2 January but Mrs C called to query the payment on 3 January by which time it was pending or had gone through.

I'm very sorry Mrs C was duped into signing up for a service she knew nothing about and didn't want. However, after having considered the relevant regulations, I don't think it's unfair or unreasonable for NewDay to refuse a refund

My final decision

My final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 24 July 2020.

Razia Karim
ombudsman