

The complaint

Mr J complains that MBNA Limited hasn't refunded disputed transactions on his account.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In April 2023 Mr J received a message from MBNA to say a new credit card was being sent to him because his old one was going to expire. Later in April 2023 and in early May 2023 around £200 of payments were made across five transactions. Mr J noticed the transactions and made a claim to MBNA saying he didn't recognise them. MBNA considered the claim but decided not to refund them to Mr J. It said that Mr J's personal Identification Number (PIN) were used on two transactions before contactless payments were then used for the remaining disputed payments. And Mr J had told it that only he knew his PIN and it wasn't written down.

Mr J remained unhappy, so he brought his complaint to this service.

Our investigator didn't think the complaint should be upheld. She said that Mr J hasn't been able to explain how a third party could've used his PIN to make some of the transactions and she would've expected a third party to spend as much as possible on the account over a short space of time – which wasn't the case here.

Mr J disagreed and asked for an Ombudsman's review. He said he didn't make the payments and want them all refunded.

What I've decided – and why

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

Where the evidence is incomplete, inconclusive, or contradictory (as it is here), I have to make my decision on the balance of probabilities – that is, what I consider is more likely than not to have happened in the light of the available evidence and the wider surrounding circumstances.

I've read and considered the whole file. But I'll concentrate my comments on what I think is relevant. If I don't mention any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is a fair and reasonable outcome.

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

Broadly speaking, Mr J is responsible for any payments that he authorised (either by making them himself or allowing someone else to) and he isn't responsible for unauthorised payments. The relevant regulations to this effect are the Payment Services Regulations ('PSRs'), and I've considered these alongside the terms and conditions of Mr J's account.

The key questions for me to decide are:

1. were the payments authorised by Mr J; and
2. if they weren't, did Mr J fail with intent or gross negligence to comply with his obligations under the PSRs and/or the terms and conditions of his account?

To start with, I've seen the bank's technical evidence for the disputed transactions. It shows that the first transaction on 25 April and 01 May 2023 were authorised using CHIP and PIN. Before further payments were made on those days and 27 April 2023 via contactless payment. I'll now need to consider the information provided by both parties to determine whether there's sufficient evidence to hold Mr J responsible for the disputed transaction or not.

Having done so, I'm not persuaded that it's more likely than not a third party has managed to intercept the new card sent out by MBNA and been able to obtain Mr J's PIN (which he says isn't written down anywhere and only he knows it) in order to spend money on the account. Mr J said he didn't ask for a new PIN and MBNA has said it wouldn't send out a new PIN unless Mr J had requested it. So, even if a fraudster had stolen/intercepted the new card, that doesn't explain how any third party would have known Mr J's PIN.

The transactions also take place over a number of days which isn't typical behaviour of a fraudster who would normally try and take as much money from the account as quickly as possible. So - on balance - I'm satisfied Mr J either authorised or consented to all the disputed payments here.

As a result, I'm not going to ask MBNA to do anything more.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 14 August 2023.

Mark Dobson
Ombudsman