

The complaint

Mr A complains that MBNA Limited ("MBNA") won't refund over £2,900 he lost to a HMRC impersonation scam in August 2022.

The details of this complaint are well known to both parties so I won't repeat everything again here. Instead, I will focus on giving the reasons for my decision.

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.

Having done so, I agree with the conclusions reached by the investigator for the following reasons:

- It isn't in dispute that Mr A authorised the two disputed payments he made to his Wise account using his MBNA credit card (where his funds were subsequently transferred on to the scammer from his Wise account). I appreciate Mr A was tricked into making these payments thinking he was paying money owed to HMRC. But the payments were requested using his legitimate security credentials provided by MBNA, and the starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.
- However, I've considered whether MBNA should have done more to prevent Mr A from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.
- I appreciate that overall, Mr A has lost over £2,900. But this amount wasn't paid in one large or 'out of character' transaction. It was spread over two separate smaller increments which, in my judgment, would not have appeared particularly unusual or out of character such that they ought to have been regarded as suspicious or indicating that he might have been at risk of falling victim to a scam. The payments were not large enough that either of them could be considered significantly unusual. And while I appreciate that two payments were made to Mr A's Wise account on the same day, I don't think the pattern or cumulative value of these payments ought to have concerned MBNA either.
- So, having considered the payments Mr A made to his Wise account, I'm not persuaded there was anything that ought reasonably to have triggered MBNA's fraud monitoring systems, or that would have indicated he was in the process of being scammed.
- I also don't think there was anything more MBNA could've done to recover the money either. A chargeback claim wouldn't have been successful given Mr A had used his credit card to pay money into another of his own accounts, which was successfully deposited. It's also not clear if Mr A has made a claim under Section 75 of the Consumer Credit Act 1974. However, it seems that any Section 75 claim would also likely fail given Mr A first

paid money to his Wise account before transferring it to the scammer, which would break the debtor-creditor-supplier chain required for such a claim to succeed.

- Mr A has also made reference to the Contingent Reimbursement Model as he considers his money should be refunded in line with the Code. However, the CRM Code only applies to authorised push payments; it does not apply to debit or credit card payments. The firm complained about also has to be a signatory to the Code. So, I'm afraid the payments made from Mr A's MBNA credit card do not fall within the scope of the CRM Code for reimbursement.

I appreciate this will likely come as a disappointment to Mr A, and I'm sorry to hear he has been the victim of a cruel scam. However, in the circumstances, I do not consider it would be fair and reasonable to hold MBNA liable for his loss.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 25 January 2024.

Jack Ferris
Ombudsman