

The complaint

Mr B complains that MBNA Limited allowed him to make large credit card payments to gambling websites without intervening.

What happened

Mr B had a credit card account with MBNA. He also had a gambling addiction. In a single day in April 2019, he made seven payments to a gambling website totalling £6,200. Over two days (which may be the same night) in October 2019, he made five payments which added up to £6,000.

Three days later, Mr B complained to MBNA, saying that it should have noticed these payments and stopped them. He asked for a refund of all his gambling payments. He pointed out that from April 2020, the Gambling Commission had prohibited gambling websites from accepting credit card payments. He recognised that his own payments pre-dated that rule, but he argued that the rule's existence demonstrated that people with gambling addictions were not solely responsible for their actions.

MBNA said that gambling transactions alone would not have been a cause for concern. Mr B had been running his account well, with no signs of financial difficulty. There had been nothing in MBNA's terms and conditions to say he could not use his credit card for gambling. The Gambling Commission's rules do not apply to credit card providers, they only prevent merchants from accepting credit card payments, which was nothing to do with MBNA.

Being dissatisfied with that response, Mr B brought this complaint to our service. But our investigator did not uphold it. She said that in 2019 there had been nothing in MBNA's terms and conditions, or in regulations, to say that Mr B could not use his credit card for gambling. He had not told MBNA about his gambling addiction until he had complained. There had been nothing about the account to indicate that he was in financial difficulties either, since the account had been run well. She noted that MBNA's systems had picked up on the large payments and flagged them for attention. But this had only been to verify that Mr B had authorised them, which he had, and she thought that was enough. MBNA had been under no obligation to interfere.

Mr B did not accept that opinion. He argued that MBNA should have realised that he was spending too much, based on his annual income, which he had declared when he'd opened the account. The fact that he had been keeping up with his payments on his account should not get MBNA off the hook, because they had not known how he had been managing to do that – for all they had known, he might have been incurring further debt elsewhere. Sending him a text message to verify the payments had not been enough; this should have been followed up with a phone call, so that a staff member could check that everything was alright. He said the Gambling Commission's new rule should be applied retrospectively, because the need for it illustrated that lenders were not to be trusted. He asked for an ombudsman to review his case.

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 do not uphold this complaint, for broadly similar reasons to those given by the investigator. I will explain why.

I recognise that there are good reasons for stopping people from using credit cards for gambling transactions. The rules made by the Gambling Commission do not apply to MBNA, although I can see why Mr B has mentioned them. But MBNA does have duties under rules made by the Financial Conduct Authority, and there are also relevant guidelines issued by other bodies about how lenders should treat their customers. These include watching out for signs that its customers may be in financial difficulties, and pro-actively contacting them if there is cause for concern. And a customer who is addicted to gambling should be treated as vulnerable, once the lender knows about it. However, there is no duty to block a transaction just because it is related to gambling.

Gambling large sums of money over a short time, such as a single day, or repeatedly gambling over a period of time, could potentially suggest both of these problems – addiction, and financial difficulty. So although there was nothing about gambling in MBNA's terms and conditions at the time, I agree with Mr B that that does not automatically absolve MBNA of all responsibility. I accept that Mr B had a gambling addiction. But I think it is fair to judge MBNA based on what it knew, and on what it should have known based on the information available to it. For that purpose, I have considered whether the gambling transactions ought to have alerted MBNA to the risk that Mr B was likely to be vulnerable or was in financial difficulty in 2019. However, this would not mean that MBNA had to block the payments. It would only mean that it had to get in touch with him and see if he needed any help. This might have led to an agreement to block any gambling transactions in future, which would have prevented Mr B making the October payments, but it would not have meant that the April payments would have been blocked or refunded.

I will summarise the relevant transactions. Mr B opened the account in April 2017. The first gambling transactions were made two years later, in April 2019. He made two deposits of £300 each on the same day, but he also received nearly £1,200 in winnings during the same day and the next day. I don't think that indicated a problem with his finances, nor (taken on its own) an addiction.

A few days later, Mr B made a number of payments of between £500 and £1,500, which in a single day came to £6,200. (His winnings were only a fraction of that.)

After that, there were three days in June when he paid £200 each day. Then in September he paid £17.20. Finally, in October, he gambled another £6,000 (winning nothing). Shortly after that, he told MBNA he had a gambling problem, and he raised a complaint.

The large amounts Mr B gambled in April and October could have been indicators of financial difficulty. Mr B had told MBNA in 2017 that his income was £45,000 a year, so these were not trivial outlays. They were unusual enough to trigger an automated fraud check. Balanced against that, however, are the fact that both before and after April, he stayed within his credit limit and made more than the minimum payments. That would not have suggested to MBNA that he was struggling. I take Mr B's point that MBNA did not know if he was making these payments solely with his income from work, or if he was borrowing elsewhere, but MBNA did not have to speculate about that.

I also note that Mr B's credit limit in April 2019 was £16,200, so the amount he had spent was less than half of that. The cash transaction fees caused him to exceed his credit limit by about £15, the only time he exceeded the limit in the history of the account, but his winnings brought the account balance down to within the limit the next day, and the day after that he paid £500 of his own money into the account. After that, he continued to make payments into the account to further reduce the balance. So I think he appeared to be managing the account successfully and responsibly. I don't think MBNA had cause to think he was struggling.

I also don't think that there was anything during the period between April and October to suggest to MBNA that Mr B had a gambling addiction. The gambling transactions were infrequent, and there were almost no gambling at all between June and October. On balance, I am satisfied that MBNA did not have to take any action.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 31 August 2021.

Richard Wood
Ombudsman