

The complaint

Mr J complains MBNA Limited are holding him liable for transactions made on his credit card account which he says he didn't make.

What happened

I summarised the facts surrounding Mr J's complaint in my provisional decision. I now repeat those same facts for the purposes of issuing this final decision.

- Mr J says he and members of his close family have been targeted by fraudsters for a while. He runs a property management business and owns a significant number of properties. He also says fraudulent companies have been set up in his and his sons' names; incidents which have been reported to the police.
- Mr J disputes making multiple transactions on his credit card. A set of cardholder not present payments were made to different merchants, including a restaurant which looks to have stopped trading at the time. Mr J told MBNA he didn't make the payments and MBNA decided not to hold him liable. They sent him a replacement credit card in the post.
- Mr J says he was away when the replacement card arrived and one of his sons picked up the card and noticed the envelope was slightly damaged and the seal was compromised in part. He placed the card in Mr J's study and the card was secured.
- Another set of payments was then made using the replacement card's details and again, some of the payments were made to the same restaurant. Mr J reported the payments to MBNA, but this time they held him liable. They found it was unlikely someone could have made the payments using his replacement card without his knowledge given the card was securely stored away from other persons.
- Mr J reported the payments to the police soon after they happened, and it appears the Crown Office and Procurator Fiscal Service (COPFS) is involved and there is an active investigation. Other members of Mr J's family have also reported similar crimes to the police.

Our investigator decided not to uphold the complaint and Mr J asked for a final decision. I considered the complaint and decided to reach a different outcome to that reached by our investigator. I provisionally upheld the complaint. My findings were:

- *"Under the Payment Services regulations 2017, a payment services firm, which MBNA is, cannot hold their customer liable for payments they didn't consent to. So, what I must decide is whether it's more or less likely that Mr J consented to the payments he disputes making.*
- *I'm not persuaded Mr J consented to the disputed transactions made using the details on his replacement card. I believe he was not at his home when the card*

arrived – it appears he and his wife were visiting a relative in another part of the United Kingdom at that time and he has provided evidence to support this conclusion.

- One of Mr J's sons, who helps him run his property business, recalls the envelope the replacement card arrived in appeared to be slightly damaged and not fully sealed. I have thought about this point, and it's possible for an envelope to be carefully opened and then resealed, and the magnetic strip on a card can also be read using a device. So, as none of the payments were Chip and PIN, it's plausible the fraud could have been carried out this way irrespective of how the card was subsequently stored.
- Although Mr J can't explain how his card details were taken, this isn't unusual if someone had intercepted the envelope and the card after it was posted. Many victims of fraud do not know and cannot explain how a fraud occurred.
- Mr J doesn't suspect someone he is close to defrauded him, which is understandable, given no-one wants to conclude their trust has been breached in this way. But I find it's unlikely someone who didn't have some form of access to Mr J's property could have stolen the details of the card. I understand Mr J says there is sophisticated fraud being perpetrated against him, and this may very well be true, but this doesn't mean the fraud was such that the postal service was also compromised. I just have not seen persuasive evidence to show the card was likely intercepted before it arrived at his address

The person(s) who accessed the details on the replacement card is likely to be the same person(s) who carried out the previous disputed payments. I say this because it's doubtful that two persons who didn't know each would have made payments to the same restaurant. Instead, I think it's more likely that whoever made the payments using the replacement card details would have likely been on the lookout for the replacement card to arrive and they would have had the opportunity to intercept it. Mr J has indicated his household is active and has regular visitors, so it's possible there are persons who had the awareness and access to carry out such an enterprise.

- Mr J says he and his sons have had companies set up in their names without their knowledge. To support this, he sent in a copy of a letter which shows one of his sons who lives abroad wrote to Companies House about a company set up in their name which they said was fraudulent. It appears Companies House then dissolved the company shortly after looking into the matter. So, I think there is reason to doubt that Mr J or his sons ran other companies that operated in the food industry.
- Mr J reported the payments to the police and the allegedly fraudulent companies to the police. And based on what I have seen, the police are taking Mr J seriously and they are actively investigating. On balance, I find it unlikely Mr J would have reported what happened on his credit card as fraud to the police if he had consented to the payments. It would be a very risky enterprise to report a fraud he was complicit in, not least because he would be jeopardizing his liberty for a sum of money which is not considerable given his healthy financial situation, which I haven't had cause to doubt.

- *Mr J feels MBNA ought not to have processed the disputed payments given the previous set of disputed payments he reported, particularly as some of the payments were made to the same merchant.*

MBNA does have responsibilities to monitor accounts and to try to protect customers from fraud. And, MBNA's system didn't pick up on the payments to the restaurant made using the replacement card's details. But I find them sending the replacement card was a reasonable security measure, and it's not evident they should have done anything further after this point.

I don't find the value of the disputed payments was wholly incomparable with the sums Mr J sometimes spends on his account, and I've also borne in mind the card scheme provider hadn't banned the merchant and the merchant acquirer was accepting payments. So, on balance, I don't find MBNA's system should have specifically picked up on the payment requests because of their value, frequency or because a previous concern had been raised about the payee.

Putting things right

I find that MBNA Limited cannot hold Mr J liable for the payments he disputes making on his credit card account. So, I provisionally require them to:

- *Restore Mr J's account to the position it would have been in had the disputed transactions not debited the account, removing any interest or charges that were applied in relation to the transactions.*
- *MBNA needs to account for any repayments Mr J made towards the disputed payments. So, if when reworking the account, the account would have gone into a positive balance, they need to refund that amount to Mr J, and add 8% simple interest per annum on to it until it is paid to Mr J.*
- *Remove any adverse markers reported to any credit reference agency or other agency as a result of the disputed transactions.*

Mr J has asked MBNA to refund his legal costs and to pay him compensation for the distress and inconvenience he has experienced. But I am not going to direct MBNA to do this.

We are a free and informal service and do not have the same procedures or formality of a court of law. And, we are inquisitorial in approach, so we decide what information we need from either party to reach a decision we feel is fair. So, although Mr J decided to engage a professional representative to deal with his complaint, I am not awarding compensation to reimburse the costs he incurred.

It's not unusual for there to be some level of inconvenience experienced by a complainant. And, in general, I wouldn't usually place a higher value on one person's time being taken up in bringing a complaint over another person bringing a complaint. I appreciate that Mr J leads a busy life, but I don't find this is sufficient reason to conclude he had to engage a professional representative to bring his complaint to us.

Mr J was unhappy with MBNA's response to his complaint, but I don't find he should be compensated because of how this made him feel, irrespective of his community standing. I

understand why MBNA were concerned about how his replacement card details were obtained without there being an immediately apparent explanation. I too have had to consider this aspect of Mr J's complaint carefully when reaching a different outcome to that of our investigator and MBNA. So, I find it would be unreasonable in these circumstances to award compensation because MBNA didn't uphold his complaint and because I now am.

Although MBNA have a liability to refund payments a customer didn't make under the PSRs, they are not responsible for Mr J being a victim of crime or being more widely targeted. That responsibility lies firmly with the person(s) behind the payments. I understand he has gone through a very challenging time and he has my sympathy, but I am not going to direct MBNA to compensate him for this."

Since my provisional decision, MBNA responded and accepted my findings. Mr J failed to respond, and the deadline to respond has passed. As a result, I have now proceeded to make a final 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.

Mr J has not provided any further information or points for me to consider. As a result, after re-considering all the information and evidence I have, I have decided to uphold this complaint for the same reasons I gave in my provisional decision. Those findings are repeated above and form part of my final decision.

Putting things right

I have decided that MBNA Limited cannot hold Mr J liable for the payments he disputes making on his credit card account. So, I require them to:

- *Restore Mr J's account to the position it would have been in if the disputed transactions hadn't debited the account, removing any interest or charges that were applied in relation to the transactions.*
- *MBNA needs to account for any repayments Mr J made towards the disputed payments. So, if when reworking the account, the account would have gone into a positive balance, they need to refund that amount to Mr J, and add 8% simple interest per annum on to it until it is paid to Mr J.*
- *Remove any adverse markers reported to any credit reference agency or other agency as a result of the disputed transactions.*

My final decision

I have decided to uphold Mr J's complaint and, subject to Mr J accepting the decision within the deadline I have given, I direct MBNA Limited to put things right in accordance with the directions I have given above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 10 May 2022.

Liam King
Ombudsman