

## **The complaint**

Mr B has complained MBNA Limited won't refund him for transactions he didn't make using his credit card.

## **What happened**

In August 2021 Mr B travelled through a couple of countries in Europe. He got back home and noticed an email from MBNA telling him he'd exceeded the credit limit on his account.

He noticed about £13,000 worth of transactions had been made which he disputed. MBNA questioned Mr B about his card which he said he still had. MBNA didn't believe Mr B had been a victim of fraud so wouldn't refund him.

Mr B brought his complaint to the ombudsman service. Our investigator felt that MBNA's evidence showed Mr B was only now saying he'd lost his credit card. She also noted he was regularly checking his open banking app about the status of his MBNA account. She told Mr B she wasn't going to ask MBNA to do anything further.

Still unhappy, Mr B has asked an ombudsman to consider his complaint.

I completed a provisional decision on 9 November 2022. Mr B accepted this outcome. MBNA raised a number of further questions. Further evidence that I'd considered in coming to my provisional decision was shared with MBNA. They remained dissatisfied with the outcome.

I now have all I need to make my 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.

Having done so, I've reached the same conclusion as I did in my provisional decision. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

When considering what is 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 regulations which are relevant to Mr B's complaint are the Payment Services Regulations 2017 (PSRs). These primarily require banks and financial institutions to refund customers if they didn't make or authorise payments themselves. Other factors do apply but nothing else specific in Mr B's case.

To help me decide what happened, I looked at the evidence of the transactions, as well as

what MBNA and Mr B have told us. I also have taken into account the issues MBNA highlighted in their emails after the provisional decision was issued. I refer to those aspects where relevant below.

Mr B has disputed all transactions on his MBNA credit card made between 18 to 30 August 2021 except the first six transactions made on 17 August. There were other transactions made on that date which were not processed, including to a specific retailer. I can see from Mr B's current account statement that he subsequently made that payment himself with another card.

The key pieces of evidence from MBNA are two-fold:

- Mr B told MBNA on more than one occasion that the credit card remained in his possession. This meant that many disputed transactions using the genuine card and PIN took place with the card being returned to him. MBNA couldn't identify any point of compromise.
- MBNA were able to show that Mr B regularly accessed his open banking app throughout the time he was away to check his MBNA account. They believe this meant Mr B would have been able to see the increasing level of debt on his MBNA card, and knowing that he used such an app, indicated he paid attention to his cards and what was happening with them.

In subsequent correspondence with MBNA I note these points clearly concern them.

There's no dispute Mr B made a few transactions with his MBNA credit card when he arrived somewhere he stayed for a while. He firstly accessed his PIN using his online banking service.

After these first six transactions, MBNA identified potential fraud and tried to contact Mr B unsuccessfully. As the PIN was successfully used, MBNA authorised the transaction. Mr B has confirmed this transaction was part of those he made using his card. I can see that he checked to ensure he could use his PIN.

Mr B's credit card continued to be used in the same city Mr B was in but the use also continued beyond his stay there after he left on 20 August 2021. The nature of the spend from 18 August onwards also changed significantly. The level of expenditure rose.

MBNA don't believe there's a point of compromise. But I disagree. It seems to me – bearing where Mr B was at the time; a well-known area for pickpocketing – that there was a clear opportunity for his card to be pinched after someone observed him using his PIN. MBNA's own systems had identified potential fraudulent use. However as the card and PIN continued to be used – and Mr B hadn't responded to the alert MBNA sent him – these transactions continued to be authorised until the credit limit was exceeded and MBNA stopped further transactions.

All parties agree that Mr B's MBNA credit card wasn't something he used that regularly. He had taken it abroad with him but wasn't expecting to use it that much. I've seen from his bank account statement to cover this period; he was using his debit card. He'd withdrawn a considerable amount of cash which gave him money to spend. His bank account statement also shows Mr B spending money on accommodation.

This statement – along with Mr B's evidence about his travels in August 2021 – show Mr B was elsewhere when all the transactions on his credit card were being made from 20 August onwards.

I have considered the possibility that Mr B allowed someone else to use his credit card whilst he was elsewhere. But I have to wonder why that would be the case. This would be a high-risk strategy as Mr B would have known there was little or no chance of getting his money back.

On the other hand the disputed use of his card does match patterns of fraudulent behaviour – using the card until no further use is possible.

Mr B uses an open banking app to view his different banking relationships. I've seen that he has more than five accounts (some joint) as well as other credit cards. I don't dispute MBNA's evidence that Mr B was opening his open banking app and seeing top-level information about the status of his MBNA credit card.

Like MBNA I do wonder why he didn't notice what was going on. But Mr B was on holiday spending time with family, he had no reason to suspect anything was wrong with his credit card. He's already told us he didn't immediately pay any attention to emails from MBNA about his card use exceeding his credit limit until a good week afterwards. I'm afraid it's a fact that some people's attention to life admin isn't quite up to the standard that some may hope. I think it would be harsh (as well as against the terms of the PSRs) to say that just because someone didn't notice what was happening with their credit card, they should be held liable for a substantial debt.

From what I've seen I think it's possible that he wouldn't have necessarily noticed that his MBNA card was missing. MBNA continues to be concerned that Mr B insisted he still had his card when he reported the fraud in September. However I accept Mr B was simply wrong.

I have considered all the circumstances of this complaint and weighed up the available evidence. In doing so, I'm satisfied Mr B didn't authorise the use of his MBNA credit card after the transactions on 17 August 2021.

### **Putting things right**

MBNA will have to rework his credit card account to ensure this debt no longer exists including amending charges and interest payable, refund payments he made towards this debt except for money that paid off the non-disputed payments, and add 8% simple interest to that repayment if appropriate.

### **My final decision**

For the reasons given, my final decision is to instruct MBNA Limited to:

- rework Mr B's credit card account to ensure this debt no longer exists including amending charges and interest payable;
- refund payments Mr B made towards this debt except for money that paid off the payments Mr B did make on his credit card, and
- add 8% simple interest a year to that repayment, if appropriate, from the dates they were made until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 17 January 2023.

Sandra Quinn

**Ombudsman**