

## The complaint

Mr Y has complained that MBNA Limited ("MBNA") has refused to refund him money he lost as the result of a scam.

## What happened

Mr Y was playing an online game. Through the chatroom of this game, Mr Y was convinced by a number of scammers to firstly send funds to help out with one member's medical expenses and subsequently was convinced to take part in a number of crypto investments.

After a period of time, Mr Y was told that he would need to pay additional funds in order to withdraw the funds that he had already sent them. This went on for over a year and eventually Mr Y discovered that he had been scammed. Mr Y made over 90 transactions between February 2021 and March 2022, totalling over £90,000 to various scammers via various PayPal accounts.

During this period there were a number of calls between MBNA, Mr Y and the additional cardholder Mrs Y. During these calls MBNA and Mrs Y expressed their concerns that Mr Y was being scammed, but Mr Y insisted that he needed to make the transactions to recover the funds that he had already transferred and he was happy for the transactions to proceed.

In May 2022, Mr Y complained to MBNA about this matter as he thinks that it should have stopped him making the payments in question. He also added that he was suffering from memory issues and was a vulnerable consumer. Mr Y therefore requested that he be refunded the transactions. MBNA did not agree to this.

I issued a provisional decision in which I said the following;

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

*The circumstances of this complaint are not in dispute and the evidence provided by both Mr Y and MBNA set out what happened. What is in dispute is whether MBNA should refund any of the money Mr Y lost because of the scam.*

*I can see that MBNA had various conversations with Mr Y. But I think that the most important call took place on 23 February 2021. Based on MBNA's call notes and the call recording (which has been provided) I am satisfied that MBNA was aware that Mr Y was almost certainly being scammed and placed a block on his account.*

*It is not completely clear why the block was removed though it seems likely that Mr Y requested this. But given that MBNA knew that Mr Y was likely being scammed I don't think that it should really have let Mr Y make any further payments to PayPal or indeed any payments that were not routine or normal spending.*

*That said though I have to consider whether this would have stopped the scams and the resulting loss to Mr Y. Given that Mr Y had already had other accounts blocked by different financial providers and Mr Y continued to find ways to send money to the various scammers I don't think that MBNA stopping Mr Y making further payments would have stopped the scams from continuing via other means.*

*Given this I don't think that MBNA should refund the transactions that Mr Y made. But as I don't think that MBNA should have allowed the payments to have occurred, I don't think that it is fair for MBNA to have levied interest and charges on the transactions in question. So, I intend to ask that it refund them.*

*I have also considered whether MBNA could have recovered the funds via other mean such as chargeback or Section 75 of the Consumer Credit Act. But given the transactions were made via PayPal Section 75 would not apply nor would there be chargeback rights.*

*Finally, I have considered the comments that Mr Y was a vulnerable consumer and MBNA should have had increased monitoring on his account. But I can't see that MBNA was aware of this until the complaint was made. So, I don't think that MBNA did anything wrong in relation to this.*

*Putting things right*

*I currently intend to uphold this complaint in part and require that MBNA Limited should pay the following*

- Rework Mr Y's credit card account to reimburse any interest and charges levied directly because of the scam payments made after 23 February 2021 (less any already refunded)*
- If this would result in a credit balance pay interest on the credit balance at 8% simple per annum minus any applicable tax"*

MBNA agreed with my provisional decision. Mr Y's representative raised some additional points including:

- Mr Y would have had difficulty making payments via other means. This is because all other financial institutions that Mr Y held accounts with had restricted his account and had limited his daily limit and online transactions until he agreed to a medical assessment. It is my understanding that Mr Y refused to do this.
- MBNA failed to institute such a block and therefore payments continued to be made.
- MBNA should have been aware of Mr Y's vulnerabilities as a different financial institution said it made MBNA aware of this. Though the other financial institution is unable to provide proof of this, due to data protection issues.
- It should have been apparent solely from Mr Y's age that he had increased vulnerability due to changes in technology and that older adults are more frequently the target of scammers.

### **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.

In this instance regardless of whether MBNA identified or should have identified Mr Y as vulnerable, I agree that in this instance the payments should have been prevented from being made once MBNA was aware that Mr Y was likely being scammed. After all, this is a credit card account and therefore the funds are MBNA's that it is lending to Mr Y, so it has more say in whether a payment should be carried out than would be the case on a current account with a credit balance – whereby the money being spent would've been the consumers own money.

That said though, I remain of the opinion that Mr Y would likely have found some way to continue to send the funds to the various scammers had this account been restricted. There are so many different ways to send funds to individuals and whilst Mr Y's other accounts had been blocked, Mr Y was still able to pay his credit card bill from an account. This suggests that Mr Y would have been able to open a different credit card with a different provider unaware of his circumstances and utilise it or find some other means of sending money to the scammers, even if it required taking out credit facilities elsewhere.

So overall, albeit on balance, I am of the opinion that MBNA should have stopped the payments, but I don't think even if it had, it would have stopped the scam or stopped Mr Y from repeatedly sending money to the scammers.

So given this, I am coming to the same conclusion as I did in my provisional decision. That said, to clarify, Mr Y had two credit card accounts with MBNA. One was used very briefly after I think MBNA should have stopped the payments. There only seems to have been a small amount of interest charged on this account. But the redress I am recommending applies to both accounts.

### **Putting things right**

I uphold this complaint in part and require that MBNA Limited should do the following to put matters right:

- Rework Mr Y's credit card accounts to reimburse any interest and charges levied directly because of the scam payments made after 23 February 2021 (less any already refunded); and
- If this would result in a credit balance pay interest on the credit balance at 8% simple per annum from the time of the credit balance to the date of the settlement, minus any applicable tax.

### **My final decision**

Because of the reasons given above and in my provisional decision, I uphold this complaint in part and require that MBNA Limited to do what I have outlined above, to put matters right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 22 February 2024.

Charlie Newton  
**Ombudsman**