

The complaint

Mrs W complains that MBNA Limited is holding her liable for the debt on a loan she says she was made to apply for as part of a crypto investment recovery scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat everything here.

In summary, in October 2023 a loan was taken out with MBNA in Mrs W's name for £15,000. The loan was paid into Mrs W's bank account on 19 October 2023 from where she transferred the funds to a newly opened account with an electronic money institution (EMI) referred to here as ('R'). From 'R' the funds were transferred onto the scammer in multiple payments.

The first payment towards the loan was taken by direct debit from Mrs W's bank account on 10 November 2023.

Mrs W subsequently got in touch with MBNA to let it know she'd been the victim of a scam and was manipulated into applying for the loan by the scammers. MBNA investigated things and ultimately decided that as Mrs W knew about the loan; and it was paid into her genuine bank account, she was therefore liable for it.

Mrs W referred her complaint about MBNA to the Financial Ombudsman.

Our Investigator looked into things but didn't uphold Mrs W's complaint. Ultimately, he thought MBNA had done nothing wrong in pursuing Mrs W for the loan debt.

Mrs W didn't agree and so the case has been passed to me to decide. She said she'd been the victim of a scam and hadn't benefited from the £15,000. She accepted MBNA had done nothing wrong in granting the loan – but she felt it was unfair to hold her liable for the whole loan amount given the surrounding circumstances.

Mrs W has also told us that the loan is having a significant impact on her mental health and wellbeing and that she is struggling to make the repayments.

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 decided to not uphold it for materially the same reasons as our Investigator.

I've very carefully considered all the evidence provided. And I'd like to assure Mrs W that if I don't mention a particular point, it's not because I haven't considered it, but I've focussed instead on what I believe to be important to the outcome of this complaint.

It's accepted that at the time of the loan application Mrs W was unfortunately in touch with, and being scammed by, a third party. However, this doesn't automatically mean MBNA should be required to write the loan off or waive the interest and charges. I'll explain why.

Mrs W was fully aware at the time that she'd applied for an MBNA loan in her name. And it's not in dispute that as part of that application she consented to the terms of the loan agreement, with the first repayment made in November 2023.

I understand the loan funds were moved out of Mrs W's bank account to 'R' and Mrs W says the whole thing was a trick by the third party and she therefore doesn't think she should be liable for the loan. But as I've said above, I think it's clear Mrs W *did* consent to the loan with MBNA, it's just she didn't realise at the time the third party was otherwise tricking her.

I understand Mrs W's point about her not benefiting from the loan funds; and she has my sympathy in this regard. But I don't think this was MBNA's fault. Ultimately MBNA granted the loan to Mrs W in good faith, in circumstances where Mrs W was fully aware of the loan and the funds were paid into her account from where she had use of them.

I'm sorry to hear of the situation that Mrs W has unfortunately found herself in. But for the reasons I've explained, I don't think that was because of any fault on the part of MBNA. And so, it wouldn't be fair or reasonable to ask MBNA to write off the loan or waive the interest and charges.

I do however have a great deal of sympathy for Mrs W and fully appreciate that she is finding it hard to meet the loan repayments. MBNA should remain sympathetic towards her in this regard.

My final decision

For the reasons explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision **before 29 May 2024**.

Anna Jackson
Ombudsman