

The complaint

Ms S complains that MBNA Limited (“MBNA”) failed to stop fraudulent transactions leaving her account and caused unnecessary stress and inconvenience by repeatedly cancelling her card.

What happened

Ms S explained that a small number of unrecognised transactions appeared on her account shortly before Christmas. When she raised them with MBNA, they cancelled her card and re-issued it. They also refunded the disputed transactions. Later that month there were further transactions made using the new card and once again MBNA replaced the card and ensured that Ms S wasn’t out of pocket. This happened a third time, with another card issued to Ms S.

Ms S has said that she used this card to support some of her business activities and the repeated updating of them had caused her considerable stress and inconvenience. She also reported that some of her funds had been held back (by other merchants) due to the changes of her card details.

Ms S complained to MBNA who accepted they’d mishandled the situation. They explained that because the disputed transactions had been set up with a continuous payment authority (CPA), they were continuously billed to Ms S’s account and not her specific card. MBNA said the transactions were authorised because credit cards are a guaranteed form of payment, and they couldn’t cancel them due to Mastercard regulations. But, they’d add them to their Recurring Payment Stop Service (RPSS) which would request those merchants stop taking the payments. MBNA went on to say they couldn’t guarantee it wouldn’t happen again. But, they recognised they should have added the merchants to the RPSS when the original report was made to them some weeks earlier.

MBNA confirmed that if it did happen, they would be refunded (as all the others had been). They offered (and paid) £200 to Ms S for the impact this had had on her

Ms S was left unhappy with how MBNA had dealt with her situation and thought the offer of compensation was insufficient to recognise the time, loss of income and stress the issue had caused, so she then brought her complaint to the Financial Ombudsman Service for an independent review. An investigator was assigned to look into the matter and both parties submitted evidence.

Ms S detailed the impact this had had on her and how some of her income had been affected. She explained how difficult it was to continually update her details and feared it may have an impact on her ability to operate her business. Ms S said she had to borrow funds because of the delay in receiving payments. She explained the time and effort required to deal with the matter and thought a much higher amount of compensation was due to her for how MBNA had dealt with her issue. During the complaint process, Ms S received a further notice about one of the disputed transactions where MBNA told her they were to replace one of the disputed transactions onto her account.

MBNA provided details of their records and their report of the investigation, including their conclusions. They accepted they'd failed to put the merchants on the RPSS but maintained that some of these payments may still leave her account. They thought the £200 payment to Ms S was fair.

After reviewing the evidence, the investigator concluded that MBNA hadn't acted fairly and they should increase the compensation payment to (in total) £400 to recognise the stress and inconvenience caused to Ms S.

MBNA accepted the recommendations, but Ms S did not. She believed that a figure of around £1,500 would be more appropriate. She commented that the circumstances were "...severe and prolonged" and that the £400 wasn't punitive enough to give MBNA "...food for thought".

As no agreement could be reached, the complaint has now been passed to me for a 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.

The relevant law surrounding authorisations are the Payment Service Regulations 2017 and the Consumer Credit Act 1974. Essentially, MBNA has no authority to make the payment unless they have Ms S's consent to do so. Without this consent any such transaction must be regarded as unauthorised.

Here it's accepted that those transactions Ms S disputed were unauthorised and have since been refunded. MBNA have referred to Mastercard procedures in their response to Ms S concerning the prevention of payments from her account. Whilst I understand what MBNA are saying here, the above regulations are clear – if Ms S hasn't given her consent, then those payments are unauthorised – even if the CPA triggers a further request for the payment. It's the responsibility of MBNA to deal that as they have no relevant instruction to process the payment. How they do that is of no real concern to Ms S, but it was unfair of them to tell her they can't prevent them and leave her in a position where she was continually checking her account to see what's been applied to it.

MBNA explained that the CPA operates against the account rather than the card itself, so I was confused regarding the position they took to repeatedly change the card details as they already knew this wouldn't solve the issue. I accept it was appropriate to change the card on the first occasion as they couldn't know what else may be done with the original card details, but I think the other changes were unnecessary and caused further inconvenience to Ms S.

MBNA accept they let Ms S down and I'm satisfied the refunds of the disputed transactions was a fair and reasonable approach for them to take. But, Ms S didn't think that the compensation payment recommended by the investigator was sufficient, she argued that £1,500 was more appropriate. Ms S thought that part of the financial settlement should be punitive.

We don't seek to punish businesses for their mistakes, but to independently assess the impact and make a finding that is both fair and reasonable based on all the evidence. Ms S has explained in detail the impact the (multiple) changes of card had on her and her business. As I've mentioned, the original change of card was a reasonable step for MBNA to make in order to protect the account, so there would have been some inconvenience, including changing those details with other organisations Ms S worked with.

I also recognise there were additional changes which caused unnecessary inconvenience and stress to Ms S. I accept there were some issues with other organisations that she used as part of her business, but I'm limited in the amount of weight I can rely on when assessing MBNA's involvement as they weren't directly liable for some of the delays. That's because some of those delays appear to be from policies laid down by these other organisations.

When considering the payment that MBNA should make, I have considered the overall impact on Ms S (including what else happened through the losses to her business). It seems to me the main issue took place over a period of a month or so with an ongoing risk that additional CPAs could be triggered (according to MBNA) leading to additional disputed transactions (which they'd already committed to refunding). MBNA also issued a letter to Ms S after a few months telling her she may have to pay for an earlier disputed transaction (which turned out to be a mistake by MBNA).

Overall, I recognise that Ms S was the one who experienced poor service provided by MBNA, but I also have to take into account they weren't the ones who registered the CPAs. I've also considered their actions when trying to put right the problems experienced by Ms S, although I recognise some of these decisions caused further inconvenience to her. On balance, I thought the investigator's recommendation to increase the overall payment to £400 was both fair and reasonable in the specific circumstances of this complaint. I recognise that Ms S will likely disagree with me, but I'm of the opinion that this amount recognises the difficulties experienced by Ms S and the length of time it occurred over. I accept that Ms S had some anxiety going forwards, but as far as I'm aware there were no further losses as a result of additional unrecognised transactions and MBNA had already committed to refunding those if they occurred.

My final decision

My final decision is that I uphold this complaint against MBNA Limited and they're instructed to pay Ms S a further payment of £200 in order to settle this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 27 October 2024.

David Perry
Ombudsman