

complaint

Mr O complains that MBNA Limited is holding him responsible for a debt he says isn't his. The debt came about after a number of credits and debits were made to his credit card account. Mr O wants MBNA to put his account right and remove any damaging information from his credit record – and to stop chasing him for the money. He's also looking for compensation for MBNA's poor handling of his complaint.

background

The details of this complaint are well-known to both Mr O and to MBNA. So I don't repeat them here. But dates and the nature of some of the transactions on Mr O's account(s) are important – so I refer to those where necessary.

Mr O contacted MBNA on 15 April 2014 to query why the balance on his credit card account was so high – as he'd recently cleared the large balance outstanding. MBNA told him about some large credits to his account – that were then used to fund spending on gambling websites, and some cash machine withdrawals. Mr O said he wasn't responsible for any of this activity. He was upset MBNA hadn't stopped the transactions happening.

MBNA investigated the matter but said it couldn't safely conclude the transactions weren't made without Mr O's knowledge or consent. It pointed to several factors including:

- Mr O's previous account activity meant the transactions weren't that unusual;
- the credit card was still in Mr O's possession and his PIN was not recorded anywhere – so it was difficult to see how the cash machine withdrawals were made without him knowing;
- Mr O said he'd not used online banking – but MBNA's records showed regular usage – during the period in question;
- a debit card from another of Mr O's accounts – with Bank 2 (which had been used to receive payments from a gambling website) – had then been used to credit Mr O's MBNA credit card account; and
- there appeared to be links between where online banking and gambling transactions had been carried out.

MBNA acknowledged Mr O had said his email account had been hacked. But this wasn't enough to prove he'd not set up an account with a (new) gambling website, which featured in most of the activity he said he'd not carried out. And it apologised for how some of its communication with Mr O might have seemed – but explained the need to investigate his complaint thoroughly. Mr O wasn't happy with MBNA's response so contacted us.

One of our adjudicator's looked into the complaint but didn't think he could recommend MBNA refund Mr O. In summary, he agreed with MBNA and couldn't see how an unknown party had carried out the activity. The adjudicator said it was unlikely an opportunist would:

- open an account with a gambling company (using largely the right contact information for Mr O);
- make credits to Mr O's MBNA credit card account but use these for gambling, rather than buying goods;

- use Mr O's account with Bank 2 to receive credits from the gambling website and then use the money to credit Mr O's MBNA account;
- be able to take, use and then replace Mr O's credit card (to make the cash machine withdrawals) without him realising;
- guess Mr O's PIN (as it wasn't recorded anywhere) in order to use his card; and
- 'self-exclude' themselves from the gambling website on 6 April 2014 – shortly before Mr O queried the activity with MBNA.

The adjudicator also acknowledged what Mr O had said about his email account being hacked and his online banking password being changed. But it seemed any compromise to Mr O's email account was some time before the disputed activity – and his password was changed after it started.

Mr O didn't agree with the adjudicator's view so his complaint has been passed to an ombudsman to review. He's adamant he didn't carry out any of the disputed activity.

my findings

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

I do not doubt how strongly Mr O feels about this matter. That's clear from what he's said to both MBNA and the adjudicator – and at some length. And I can understand why he might feel this way. After all, he'd just cleared a large outstanding balance on his MBNA credit card. And he's now faced with owing a similar amount.

But I'm afraid I have to tell Mr O that I think the adjudicator (and MBNA) has reached the right outcome here. Indeed, there's very little I can add to what the adjudicator has already said. I think he set out the position very clearly and thoroughly.

I find it difficult to accept the circumstances (as summarised above) that Mr O describes. The timeline of events is difficult to believe, with the suggestion an opportunist hacked Mr O's email account but waited some time to take advantage of it. And that they should 'self-exclude' themselves from a gambling website shortly before Mr O becomes aware of the disputed activity.

On top of this, I note from the statements of Mr O's account with Bank 2 that his debit card was used to make a cash withdrawal on 2 April 2014. The location of this appears to be close to where Mr O's MBNA credit card was used to withdraw cash that day.

Mr O contacted Bank 2 in the middle of May to query some transactions – but it's not clear whether these included the withdrawal from the cash machine on 2 April. In his contact with Bank 2 he says that card was destroyed months ago. But it had been used several times in April – and for spending that's consistent with how Mr O uses his accounts.

All the above leads me to think it's more likely Mr O made the transactions. If he didn't, then I'm satisfied they were carried out with his knowledge or agreement. So I don't think I can fairly direct MBNA to refund the money or take any other action to address his concerns.

I know my decision will come as a disappointment to Mr O. Given how strongly he feels, he may wish to pursue his complain through other means. But it brings to an end what we – in trying to resolve the dispute informally – can do for him.

It is possible the debt may cause Mr O difficulties with his finances. So it is worth reminding MBNA that it should respond positively and sympathetically if this is the case. This does not require it to reduce or write-off any of the debt. Simply that MBNA should take account of Mr O's circumstances when working with him to ensure any debt is repaid.

my final decision

For the reasons I've given, my final decision is that I don't uphold Mr O's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 22 May 2015.

Andrew Davies
ombudsman