

complaint

Mrs G complains that MBNA Limited will not refund one online transaction and two cash machine withdrawals made using her credit card but without her authority or knowledge.

background

In May 2010, over a two-day period, Mrs G's MBNA credit card was used to make one online transaction (to a gambling website) and two cash withdrawals. After the third transaction MBNA attempted to contact Mrs G by telephone. When it couldn't reach her it blocked her card and wrote to her. Her card was not used again and, after ten days, MBNA lifted the block. A few days later Mrs G told MBNA she didn't recognise the transactions and that they must be fraudulent.

MBNA said that the security number on the back of her card was checked for the online transaction. For the two cash withdrawals the 'chip' in Mrs G's card had been read both times with the correct personal identification number (PIN). And Mrs G said the card had remained in her possession throughout. So it was not clear how the disputed transactions had been carried out without her knowledge or authority.

The adjudicator did not recommend the complaint should be upheld. He did not consider he could properly conclude that the disputed transactions had been made without Mrs G knowing about them or agreeing to them.

Mrs G disagreed. She didn't use the card and so she didn't think she should have to pay for the transactions.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities - in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

I have considered MBNA's records. These show that for the online transaction the correct security number on the back of Mrs G's card was given. And the disputed cash withdrawals were made using Mrs G's card. For these two transactions, the records show the chip embedded in the card was read each time and the PIN input correctly at first attempt.

For me to accept that Mrs G is not liable in this case, I need to be satisfied it was more likely than not that a third party stole her credit card having obtained her PIN, used the card and then returned it, all without Mrs G's knowledge. But Mrs G says that this could not have happened. She is certain that nobody was in a position to take – and replace – her card, and that the card remained with her throughout.

Mrs G says she does not keep a written record of her PIN and has never disclosed it to anyone. The PIN is not kept in unencrypted form on the card and, given all the possible four-digit combinations, I find it difficult to understand how someone could have accurately guessed the PIN.

Having carefully considered all of the available evidence, I am not persuaded I can properly conclude – on the balance of probabilities – that Mrs G did not make or authorise the disputed withdrawals. Because of this, it would not be fair for me to instruct the bank to refund any of the disputed transactions.

my final decision

My decision is that I do not uphold this complaint.

Amanda Maycock
ombudsman