

complaint

Mr W complains that MBNA Limited is holding him responsible for debts under two credit card accounts. Mr W says he did not apply for one of the accounts and should only be responsible for the other as from the date the last payment was made (in November 2012). Mr W wants MBNA to write the (remaining) debts off.

background

Two credit card accounts were opened in Mr W's name; one in 2005 (Account 1) and the second in 2009 (Account 2). Mr W initially said he did not know anything about either account – he found out about them in late 2012 when his marriage broke down – and complained to MBNA. He said the accounts had almost certainly been opened fraudulently by his estranged wife, whom I refer to as Mrs W – and, if so, she should be responsible for the debts. Mrs W was an authorised user (additional card holder) on both accounts.

MBNA investigated the matter but rejected Mr W's complaint. The bank said Mr W was responsible for the debts in his name (and not Mrs W) and it would only consider accepting liability for fraudulent activity if Mr W was prepared to prosecute the person responsible. Mr W said he was not willing to do so. MBNA provided Mr W with a copy of the signed application form for Account 1. Account 2 was opened online so the bank did not have a signed application form for it.

Mr W accepted the signature on the application form for Account 1 looked similar to his. But he was upset at how MBNA had handled matters – so he said he should only pay the amount due at the time he raised the issue with the bank (late 2012).

Our adjudicator did not recommend Mr W's complaint should be upheld. She considered that as Mr W had accepted he had opened Account 1 and that it was more likely than not that Mr W was party to the application for Account 2, MBNA could hold him responsible for the full debts on both accounts.

Mr W did not agree with the adjudicator's view, so the matter has been referred to an ombudsman for a final decision.

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 based on the balance of probabilities – that is, what I consider is most likely to have happened in light of the available evidence and the wider surrounding circumstances. Mr W has made a similar complaint about another bank (Bank A). While that complaint has been considered separately, I have referred to all the information available to make sure I consider the full circumstances of the matter.

Having done so, I have reached the same conclusion as the adjudicator, for broadly the same reasons. I am sorry to disappoint Mr W.

Deciding which party is responsible for any debts is normally taken into account as part of the financial settlement under divorce proceedings or any separation arrangements. It is possible the responsibility for the debt with MBNA has been – or can still be – dealt with through this route.

I have no reason to doubt Mr W's belief that his estranged wife completed the application form for Account 2, or that she may have carried out the spending on both accounts. And I can understand the reason behind his reluctance to prosecute Mrs W. But the key issue I have to consider is whether MBNA can continue to hold Mr W responsible for the debt on his credit card accounts. I believe it can.

MBNA sent statements for both accounts to Mr W's address each month. I note from the statements for Mr W's current account (jointly held with Mrs W) with Bank A that monthly payments were being made to both accounts, along with payments to other credit card accounts. So I find it difficult to believe that Mr W was not aware of what was going on. And I note that some of the spending on the accounts was at retailers where purchases were also made using:

- debit card(s) from Mr W's (joint) current account with Bank A; and
- the credit card account with Bank A that Mr W is disputing.

This indicates to me that Mr W has benefitted from the spending on the MBNA accounts.

As Mr W accepts he opened Account 1, I agree with the adjudicator that MBNA can hold him responsible for the full debt. I do not consider it would be fair to restrict the debt to the amount owing to when Mr W says he found out about the account and the last payment was made (November 2012).

While I understand Mr W's concern about Account 2 being opened online (and there not being a signed application form) I consider that he should reasonably have been aware of its existence. After all, monthly statements were sent and payments made from his (joint) current account. As it is more likely than not he benefitted from (at least some of) the spending on the account, I do not believe it would be fair for MBNA to accept responsibility for the debt.

In summary, I know that Mr W will be disappointed, but I believe MBNA can hold him responsible for the full debts under both accounts.

It is possible Mr W may be experiencing some financial difficulties as a result of his debts. So it is important that I remind MBNA that it should respond positively and sympathetically to his situation.

my final decision

For the reasons I have given, my final decision is that I do not uphold Mr W's complaint.

Andrew Davies
ombudsman