

The complaint

Mrs G complains that lending MBNA Limited made to her in 2016 was irresponsible. Mrs G's complaint has been brought to us on her behalf by professional representatives.

What happened

Mrs G took out a credit card with MBNA on 8 September 2016. She told MBNA that she was having financial difficulties in 2018, and then defaulted on this debt. Mrs G's representative told us she currently owes £1,280, but she doesn't think she should have to pay this back, because MBNA had acted unfairly. Mrs G's representative said Mrs G is in financial difficulties now, and was when she took out this card. Her representative doesn't think MBNA should've lent to Mrs G.

Mrs G's representative said that MBNA hadn't properly checked her debt position before she took out the card. And she said it overcharged her with extra interest, costs, fees and charges. Mrs G's representative said that the terms of Mrs G's agreement with MBNA were unfair, and those unfair terms had been used to disadvantage Mrs G, by racking up extra costs and charges, and increasing the interest rate.

MBNA disagreed. It said that it had checked Mrs G's credit file at the time of her application, and there were no concerns. She was given a credit limit of £1,500, and although she requested an increase in 2017, she wasn't granted that.

MBNA said it applied interest charges and default sums in line with the terms of the account until MBNA found out about Mrs G's financial difficulty in July 2018. It then waived all charges, and no further charges were applied after then.

When Mrs G told it about her financial difficulties, MBNA agreed to accept a token amount from her. It told her then that this amount wouldn't prevent her account from defaulting. MBNA said that Mrs G owed it £1,273.95. It said that this debt had been passed to a third-party collector.

MBNA said that its terms were transparent, and its charges were in line with the guidance provided by the Office of Fair Trading. MBNA said it had only ever charged one late fee, on 5 June 2017, which was before it knew about Mrs G's financial difficulties.

MBNA said it wouldn't agree that having the scope to change interest rates was unfair, but actually there had been no changes in the rates applicable to Mrs G's account.

Our investigator didn't think this complaint should be upheld. She said that although Mrs G had a high level of debt before she took out the card (which presumably included her mortgage) there were no visible defaults before MBNA lent her money. Mrs G had difficulties managing her finances in 2018, and the account went into arrears and was then defaulted.

Our investigator noted that she'd drawn her conclusion on the basis of the credit report we were supplied. That was not a full report, it didn't tell us how Mrs G was maintaining other debts or how much it was costing her each month to maintain them.

Our investigator said that when Mrs G started to have financial difficulties, MBNA responded positively and sympathetically. Interest charges were stopped, and MBNA says it isn't actively collecting the outstanding balance.

Our investigator didn't think Mrs G had been treated unfairly, and she couldn't see that the interest rate on Mrs G's account had been changed.

Mrs G's representative didn't agree. She said that she was sending further evidence. She wanted to stress that Mrs G was in a debt management plan between 2007 and 2017. Mrs G's representative thought this was evidence that Mrs G wasn't managing her debts, and hadn't been for some time. Mrs G's representative said that Mrs G was paying off her lending using more lending. And in late 2017, after MBNA made this lending, Mrs G had to take out a second-charge loan on her home with a sub-prime lender to consolidate some of her and her husband's debts, but even then there was unsecured debt remaining.

Mrs G's representative said that her spiralling unsecured credit has led to increased risk to Mrs G and her husband of losing their home, as lenders kept irresponsibly lending at high interest rates during her periods of financial difficulty, including spells of illness and unemployment. Mrs G's representative hasn't suggested that Mrs G was unwell or out of work when MBNA lent her money.

Mrs G's representative said the evidence shows Mrs G was in prolonged financial difficulty in 2016 when she opened the MBNA account. Mrs G's representative thought that if MBNA had checked, it would've seen that she was in a debt management plan, and if it had checked the cost of her other credit and looked for defaults, it would not have lent to her. So Mrs G's representative said this was evidently irresponsible lending, which has worsened Mrs G's financial situation by extending her debt spiral.

Mrs G's representative said that Mrs G wanted an ombudsman to consider her complaint, so this case came to me for a final decision.

My provisional decision

I issued a provisional decision on this complaint and explained why I did not propose to uphold it. This is what I said then:

I've reached the same overall conclusion on this complaint as our investigator. But I'm conscious that both our investigator and I have asked for Mrs G's full credit file, which I regard as key evidence in this case. That has not been supplied. My current decision is reached in the absence of that evidence. So this decision will be provisional, and I'll give both sides a chance to offer further evidence before I make a final decision.

Mrs G has been represented in this complaint by a law firm. It may be that the complaint which was registered on her behalf was at least in part a standard form letter, because some of the points of complaint raised don't appear to apply in Mrs G's case. Where Mrs G's representative has complained about something that hasn't actually affected Mrs G, I'm not able to consider that as part of her complaint. Our service can only look at what has actually happened in a case.

Mrs G's representative said that some terms of the credit agreement that she signed with MBNA were unfair. I'll deal with those points in turn.

Her representative said that the costs, fees and charges that MBNA was permitted to apply under the agreement were unfair. I can find only one charge, of £12 for late payment in June 2017. Mrs G hadn't missed a payment before this, and I don't think that there were signs of financial difficulty on Mrs G's account at that time. I don't think this charge was unfair.

Mrs G's representative said that MBNA shouldn't be allowed to vary Mrs G's interest rate. I have checked Mrs G's statements, and the interest rates applied were consistent, up until MBNA stopped charging any interest because Mrs G had told it about her financial difficulties. This was the only interest rate variation on Mrs G's account. I don't think that was unfair.

Mrs G's representative said that MBNA's scope to vary its agreement with Mrs G was too wide. But the only example I can see of MBNA varying its agreement with Mrs G was when it reduced her payments and stopped all interest and charges. I don't think that's unfair.

Mrs G's representative said it was unfair for MBNA to lend to her in 2016, given her financial position at the time. Her representative considers that this lending was irresponsible.

Our investigator asked for Mrs G's full credit file, and I have also repeatedly asked for this. It hasn't been supplied. So, like our investigator, I'm not able to see what level Mrs G's debts were at, when she took out this MBNA card, and if that matches the information MBNA has shared with us. And I can't see if credit reference agencies had been informed of any difficulties she was having in meeting those debts.

Mrs G's representative thought MBNA would be able to tell us what she owed at the time. But, as I have said in correspondence, what MBNA holds now isn't Mrs G's credit file. It is merely the results of the credit check that MBNA did on Mrs G. And MBNA has already told us that it didn't think there was anything wrong with its lending, on the basis of the credit check it did at the time.

Mrs G also says that it was irresponsible for MBNA to lend to her, and it should've realised the extent of her debt. The debt management plan that Mrs G's representative has sent us does show a considerable amount of debt. Her sole and joint unsecured debt is shown as around £35,000. It's not clear from the evidence I have what the date of those debts is.

MBNA said that it could see, when Mrs G applied for her credit card, that she owed £127,778 on her mortgage, £18,953 in loans and £6,235 on credit cards. Whilst this is also a substantial pre-existing amount of unsecured debt, it's not the same as the debt management plan amount. And the limited credit file I do have doesn't show any defaults which predate her MBNA application.

So it's not clear whether Mrs G was managing her existing debts at the time when she applied to MBNA. And, without information to show that Mrs G was having difficulty managing her debts and her credit file reflected this, or to show that MBNA should've been aware of additional debt which appears in Mrs G's payment plan, I'm not able to say that it was clearly irresponsible of MBNA to lend Mrs G this money.

There is some further evidence to show Mrs G's financial situation at the time, as we are able to see how Mrs G used the card. If someone is in very severe financial difficulties, as Mrs G's representative has suggested she was, then it's common to see that person using all of their available credit in a very short period of time. But

that's not how Mrs G used this card. She only used a little of the available credit in the first few months, and some months she didn't use the card at all.

On the evidence that's available to me at the moment, I can't say that MBNA made a mistake when it lent Mrs G money in 2016.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Neither side replied.

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.

I haven't changed my mind. I'll now make the award I originally proposed.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 15 February 2021.

Esther Absalom-Gough

Ombudsman