

The complaint

Ms M complained that MBNA Limited lent irresponsibly when providing her with a credit card account.

What happened

Ms M applied online for an MBNA credit card in August 2006. Her application showed she was earning £9,268 a year before tax. MBNA provided the card with a limit of £3,700.

In 2021 Ms M complained to MBNA that it had lent to her irresponsibly. She said the credit was unaffordable for her because of other credit she had at the time and that MBNA would have realised this had it carried out proper checks and asked for proof of her income and expenses.

MBNA responded to say its decision to lend to Ms M was appropriate based on the information she'd provided, and on the checks carried out by external credit reference agencies it had instructed at the time. MBNA said it had lent in line with its internal policy and it didn't uphold her complaint.

Unhappy with MBNA's response, Ms M complained to us. Our investigator looked into the complaint and recommended that it should be upheld. They believed MBNA shouldn't have offered Ms M the credit card because it didn't carry out proper checks regarding her ability to sustainably repay the credit and, if it had, MBNA would have discovered the lending was unaffordable for her. The investigator said that, to put things right for Ms M, MBNA should refund the interest, charges and fees applied to the card from when it started and add 8% simple interest a year. They asked MBNA to remove any adverse information recorded on Ms M's credit file in relation to the credit.

Ms M accepted the investigator's findings. But MBNA didn't, saying it had followed all applicable regulations and relied on the best data available to it to decide whether the lending was affordable for Ms M. As a result, the complaint was passed to me to review afresh.

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.

We've set out our approach to considering unaffordable and irresponsible lending complaints on our website – including the key relevant rules, guidance, good industry practice and law. And I've considered this in deciding Ms M's complaint.

Having done so, I've decided to uphold the complaint. I'll explain why.

There are several questions that I've thought about when deciding if MBNA treated Ms M fairly and reasonably when it provided her with the credit card. Bearing in mind the time of

the lending and the industry codes of practice in place at the time the most pertinent of these include:

- 1) Did MBNA complete a reasonable assessment of whether Ms M would be able to repay the credit advanced?
- 2) If not, what would a reasonable assessment have shown at the time?
- 3) Ultimately, did MBNA make a fair lending decision?
- 4) Did MBNA act unfairly or unreasonably in some other way?

I'll consider each of these in turn.

Did MBNA complete a reasonable assessment of whether Ms M would be able to repay the credit advanced?

As our investigator explained to MBNA, it wasn't required to follow the provisions set out in the Financial Conduct Authority's Consumer Credit Sourcebook (CONC) in lending to Ms M in 2006. That's because those provisions didn't come into effect until several years *after* Ms M applied for the credit card.

Nevertheless, in line with established good industry practice at the time – such as the Banking Code jointly published by the British Bankers' Association, the Association for Payment Clearing Services and the Building Societies Association and which I understand MBNA was a subscriber to – MBNA was still required to reasonably assess whether Ms M could afford to repay the credit being offered.

The specific checks MBNA needed to carry out weren't set out, but there were a number of factors it might want to have taken into account in line with good industry practice. Amongst other things, these included considering matters such as income and expenditure, how the borrower handled their finances in the past, information from credit reference agencies etc. There wasn't an obligation to take all factors into account. But I think what this meant in practice was that the scope and extent of MBNA's checks needed to reflect the nature of the lending, bearing in mind things such as the amount of credit, the interest rate and the monthly and total amounts repayable.

Above all, the checks MBNA ought to have carried out as part of its assessment needed to enable it to feel that Ms M would be able to repay any credit advanced.

I think there's a reasonable expectation that a lender would need to do more before it could feel that someone on a low income – such as Ms M here – could repay any credit advanced. This would reflect that it could be more difficult for her to meet the credit card repayments with a low income.

MBNA would also need to be more thorough the higher the amounts she had to repay, as it would be more difficult to make higher repayments depending on her income.

With these principles in mind I've thought about whether MBNA completed a reasonable assessment such that it could feel Ms M would be able to repay her credit card.

In summary then, the circumstances of the credit card application are as follows:

- Ms M was applying for the credit card which had an annual percentage rate (APR) that MBNA hasn't been able to confirm despite our request.
- Ms M was recorded by MBNA as having a gross yearly income of £9,268 when the credit card was taken out.

- The initial credit limit of £3,700 was relatively high when compared with Ms M's stated earnings. And this is even without including any interest that would be due if the full amount of the credit limit was used.

When MBNA assessed Ms M's application in 2006 it used information provided by her as well as through checking some of her credit details via a credit reference agency. MBNA said the checks showed no evidence of over-indebtedness, and that there was enough information to demonstrate to it that a credit limit of £3,700 was affordable for her.

I'm not clear as to how MBNA could adequately determine whether Ms M would be able to repay the borrowing when it seems there was no assessment made of her overall outgoings. Ms M's income was relatively low and she's told us she was working part-time, which I find plausible given her income. The credit limit offered by MBNA alone represented almost 40% of her yearly earnings before tax – and this would be nearer 50% given the likely credit card APR. On top of that, the checks MBNA carried out showed she already had a credit card with a limit of £6,000 and another with a limit of £1,000, with the balances totalling £2,290 at that time. Ms M also had an additional credit facility with a balance of £144.

Despite that, it seems Ms M's application was accepted automatically and without further checks being carried out. At that stage, MBNA hadn't looked into her living expenses or how these impacted on her in relation to the affordability of the credit card she'd applied for.

Given the credit limit represented a considerable amount for Ms M, I'm satisfied it should have carried out further checks before offering the credit to her, even setting aside the issue of whether she had any other living costs.

I think this should have put MBNA on notice that further information ought to have been sought before a reasonable conclusion on whether Ms M could afford to repay this credit card was reached.

As I've already alluded to, MBNA's internal lending policy isn't a determining factor in this case. The question is more one of whether it acted in accordance with industry codes of practice at the time. Bearing in mind the above, I don't think that MBNA did enough to reasonably assess whether it felt Ms M could afford her credit card. I don't think that MBNA did enough such that it could reasonably conclude this.

What would a reasonable assessment have shown at the time?

I think MBNA should have ensured that the scope and extent of its assessment was adapted to the circumstances of its offer to Ms M. A credit limit of £3,700 represented a relatively substantial extra financial burden in addition to her existing commitments. Given this and the information MBNA had about Ms M further checks would, in my opinion, have needed to verify her expenditure. These would have been in addition to the checks it carried out and establish that she was able to afford the credit.

One of the difficulties given the length of time since the credit card was offered is understanding what a reasonable assessment might have shown if MBNA had carried one out. Our investigator has asked Ms M for what information she can provide from the time but there are still gaps in what's available.

It could potentially be problematic to assess whether Ms M's lost out in this case as MBNA hasn't, in my opinion, carried out a reasonable assessment in line with the industry codes in place at the time. And it's also potentially difficult as Ms M hasn't been able to provide a

great deal of information herself. But that doesn't necessarily mean that Ms M hasn't lost out as a result of MBNA providing her with the credit card, or that I'm not able to determine whether she was likely to have been able to repay the borrowing on the credit card.

I say this because the credit card was offered around 16 years ago. And I don't think, given the length of time that's passed since then, that it's necessarily surprising or unreasonable that Ms M hasn't been able to provide lots of information from that time. And the reality is that, if MBNA had carried out a reasonable assessment of her ability to repay the borrowing, then Ms M wouldn't need to be asked to provide that information now.

That said, from the information Ms M has provided I can see that the balance on her credit card carrying a limit of £1,000 was steadily increasing in the lead up to her MBNA application. For example, her statements show she owed that lender just over £600 in February 2006, but that this had risen to more than £800 by June 2006. I've no reason to think the same pattern didn't apply to the other credit card she held, which had a limit of £6,000. Although the information relating to that card isn't complete, I can see she owed around £1,600 by August 2006.

So, in total Ms M owed more than £2,000 on her credit cards and her balances were probably increasing. That was before adding the additional credit MBNA agreed to provide to her.

I believe such levels of debt, when taking account of Ms M's stated income of just over £9,000 a year, ought to have given MBNA significant cause for concern in offering the lending that it did.

Did MBNA make a fair lending decision?

That Ms M's income appears to have been low, and she owed money in relation to two other credit cards, indicates to me that MBNA was taking a significant risk in providing her with an additional credit card.

I believe the indications are that a reasonable assessment of Ms M's circumstances, by MBNA, would have led it to feel that Ms M was unlikely to be able to repay this credit card.

For these reasons, I think that MBNA should have realised in the circumstances that it was unlikely Ms M would have been able to cope with the additional credit it was offering and that it wasn't in keeping with good industry practice at the time to lend to her.

MBNA's referred to Ms M's argument that she fell into more serious financial trouble at around this time because of gambling. It says this occurred in the main after she applied for her MBNA credit card and that it couldn't have been aware of the issue in August 2006. To clarify, I agree with MBNA on this point and can confirm that Ms M's gambling hasn't been a factor in me reaching my findings.

Did MBNA act unfairly or unreasonably towards Ms M in some other way?

I've carefully thought about everything provided. Having done so, I've not seen anything to suggest that MBNA acted unfairly or unreasonably towards Ms M in some other way.

Putting things right

MBNA should put Ms M in the financial position she'd be in now if she hadn't been given the credit card, albeit she's had the benefit of the money borrowed and so will need to repay the principal amount. This means MBNA will need to:

- A. Refund any interest charged on the account plus all late payment and over limit fees. Any refund should be used to reduce the outstanding balance on the account. And it shouldn't apply any interest on any outstanding balance.
- B. If – when MBNA works out what Ms M would have owed each month without the interest, charges and fees – she paid more than enough to clear her balance, MBNA should also pay simple interest on the extra Ms M paid. And it should carry on paying interest until the point when Ms M would have owed MBNA something on her credit card. The interest rate should be 8% simple a year. †
- C. MBNA should tell Ms M what it's done to work out A and B. MBNA should also remove any adverse information it's recorded on Ms M's credit file as a result of it offering the credit card account.

† HM Revenue & Customs requires MBNA to take off tax from this interest. MBNA must give Ms M a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons given, I've decided to uphold this complaint. I require MBNA Limited to put things right for Ms M as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 9 March 2022.

Nimish Patel
Ombudsman