

The complaint

Miss M complains that MBNA Limited (“MBNA”) provided her with credit she couldn’t afford to repay.

What happened

MBNA approved a credit card application for Miss M in January 2019. They provided a credit limit of £2,800.

Miss M says they were wrong to provide credit as it wasn’t affordable for her.

MBNA disagree. They say that when they approved the credit card application they used a combination of credit reference agency, computer modelling, and self-reported information to assess the application. They say that Miss M’s credit file demonstrated that she was managing her credit commitments well; there were no County Court Judgments against her, no arrears on her accounts, no defaults and that she was working within the credit limits of her agreements. They said they estimated that she would have enough disposable income to be able to sustainably pay the credit they were offering.

Our investigator thought the checks MBNA had carried out were proportionate but she didn’t think they demonstrated that the agreement was sustainably affordable for Miss M, as she noted Miss M has substantial credit available to her which if she’d used would make the repayments on this new credit facility unsustainable.

MBNA didn’t agree. They said they were required to consider Miss M’s level of debt but not her potential debt and that there was nothing in the application to suggest the credit wasn’t affordable.

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.

Our approach to considering complaints about unaffordable and irresponsible lending is set out on our website. I’ve had this approach in mind when considering what’s fair and reasonable in the circumstances of this complaint.

I think MBNA completed proportionate checks before approving the credit card. They reviewed Miss M’s credit file and gathered some information from her about her income and circumstances.

The information Miss M provided suggested she was in stable employment and earning £28,000 per year. The credit file demonstrated that Miss M didn’t have any defaulted accounts or County Court Judgments on her file. But Miss M did have access to significant credit. She already had several other credit cards and mail order accounts and the credit limit available to her at the time of application was in the region of £28,800.

The overarching requirement on the lender is to ensure that any new credit it is looking to provide isn't going to cause financial hardship for the consumer. If the consumer has access to revolving credit but hasn't used it so far, they potentially have that credit available to them. So, it is reasonable for the business to consider what the consumer can afford should they max out those credit facilities as that could literally happen in one day.

The FCA's Consumer Credit Sourcebook (CONC) applies to all credit-related regulated activities. CONC 5.2A.27 says a lender has to calculate affordability based on the maximum limit. It says that they have to make assumptions on the full amount of borrowing available. MBNA should therefore have considered the full amount of borrowing available to Miss M.

The borrowing available to Miss M once this application was completed would have been in excess of £31,000 and the investigator has calculated that even on a minimum payment this would mean Miss M was paying over 40% of her net income on revolving credit debt, before her other credit commitments and expenditure.

I think this should have led MBNA to conclude that the credit wasn't sustainably affordable for Miss M and that they were therefore wrong to approve the credit card application.

Putting things right

As I don't think MBNA ought to have opened the account, I don't think it's fair for it to be able to charge any interest or charges under the credit agreement. But I think Miss M should pay back the amount she has borrowed. Therefore, MBNA should:

- Rework the account removing all interest, fees, charges and insurances (which have not already been refunded) that have been applied.
- If the rework results in a credit balance, this should be refunded to Miss M along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. MBNA should also remove all adverse information regarding this account from Miss M's credit file.
- Or, if after the rework there is still an outstanding balance, MBNA should arrange an affordable repayment plan with Miss M for the remaining amount. Once Miss M has cleared the balance, any adverse information in relation to the account should be removed from their credit file.

If MBNA has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

*If HM Revenue & Customs requires MBNA to deduct tax from any award of interest. It must give Miss M a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

My final decision

I uphold this complaint and direct MBNA Limited to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 22 September 2022.

Phillip McMahon

Ombudsman