

The complaint

Ms B complains that MBNA Limited should not have increased the credit limit on her credit card account as the lending was both unaffordable and irresponsible.

What happened

In October 2006 Ms B successfully applied for a credit card account with MBNA and was given an initial credit limit of £11,000. In 2013 the credit limit was increased to £16,000 and in 2015 it was increased further to £21,000.

In 2021 Ms B brought a complaint to MBNA. She said MBNA should never have increased her credit limit several times between 2006 and 2017. She said that at the time she had only been making minimum payments and was using a very high level of her credit limit. She said this would have shown MBNA that she couldn't repay her balance within a reasonable length of time. Ms B went on to say that had MBNA properly checked her credit record before increasing her limit it would have seen she had taken out a lot of other credit and that she was close to her credit limits. She said this was an indicator that she was struggling with her finances and that it wasn't responsible to lend her more; that by increasing her credit limit MBNA had made her financial position worse.

Ms B went on to say that in 2017 her take home pay was £1,800 per month. She said her mortgage, household bills and transport costs came to about £1,600 and her food/clothes costs were about £150 per month. She said at this point she had over £35,000 of debt and her monthly debt repayments were more than £600. As a result, she said, she couldn't afford her existing debt and was having to borrow more every month.

She asked for a refund of all the interest she'd paid and any late payment charges after MBNA increased her credit limit, as well as the removal of late payment and default markers from her credit file.

MBNA said the credit facility and credit limit was appropriate based on the information supplied by Ms B at application. It said the credit limits were automatic increases based on Ms B maintaining her credit well. Ms B wasn't happy with this response and brought her complaint to this service. She said the credit limit increases were more than her annual salary and her account was close to its limit on several occasions. She said she rarely made more than the minimum repayment and at best she transferred her balance from card to card. She disputed that this was managing her account well.

Ms B also added that she contacted MBNA in November 2017 because she was in financial difficulty. MBNA accepted a reduced payment plan but added a default on 31 July 2018, eight months later. Ms B said if MBNA's plan was to add a default then she said this should've been done sooner. She said she had a similar situation with another credit card provider, and it added a default in January 2018. She said MBNA accepted a reduced payment but then added the default later, which she said was damaging for longer. Ms B said this situation had caused her a great deal of stress.

Our investigator outlined the rules set out by the Financial Conduct Authority (FCA)

concerning the time limits for consumers bringing their complaints to our service. These rules are set out in the Dispute Resolution (“DISP”) section of the FCA’s handbook. DISP 2.8.2R says that, unless the business consents or there are exceptional circumstances for the delay in referring a complaint, we can’t normally deal with a complaint if it’s referred to us more than six years after the event complained of, or (if later) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that they had cause for complaint.

The investigator said that the original credit card application in 2006 and the credit limit increase in 2013 occurred more than six years before Ms B’s complaint to MBNA. He also explained that as Ms B had contacted MBNA in November 2017 concerning her financial difficulties, she ought reasonably to have been aware she had cause to complain about the lending decisions on her account at that time.

He also saw nothing to suggest Ms B had exceptional circumstances which prevented her from bringing the complaint to us.

Ms B accepted this limit in our jurisdiction.

Our investigator did however confirm that the credit limit increase in November 2015 was within our jurisdiction. On this matter he concluded that MBNA hadn’t done anything wrong. He said it had shown that the decision to increase Ms B’s credit limit met its own lending criteria and that it had checked the information being reported on her credit file.

Ms B didn’t agree and asked for a final decision from an ombudsman. She said that the amount she owed was more than her annual salary and that to lend that amount to a person when they barely pay the minimum for years is irresponsible. She said MBNA also accepted a payment plan, then told her it wasn’t enough and added a default about eight months later. She said she accepted the default, but MBNA should have applied that at the time.

I issued a provisional decision on 26 July 2022. I said:

I think there are two overarching questions I need to consider in order to decide what’s fair and reasonable in the affordability circumstances of this complaint. These questions are:

- 1. Did MBNA complete reasonable and proportionate checks to satisfy itself that Ms B would be able to repay the borrowing in a sustainable way?
 - a. If so, did it make a fair lending decision?*
 - b. If not, would reasonable and proportionate checks have shown that Ms B could sustainably repay the borrowing?**
- 2. Did MBNA act unfairly or unreasonably in some other way?*

If I think Ms B has been disadvantaged in any way by MBNA’s actions, I’ll go onto consider what I think is a fair way to put things right.

Did MBNA complete reasonable and proportionate checks to satisfy itself that Ms B would be able to repay the borrowing in a sustainable way?

Before granting credit, MBNA was required to carry out a reasonable and proportionate assessment of Ms B’s ability to sustainably repay the debt. This is often referred to as an ‘affordability check’. This check had to be borrower-focussed. This means it needed to be concerned with whether Ms B could sustainably afford the borrowing (considering her specific circumstances), rather than how statistically likely she was to repay.

The latter is the risk posed to MBNA as the lender, or their 'credit risk' but this is not necessarily the same as an assessment of affordability.

What's considered reasonable and proportionate will vary depending on a number of factors such as, but not limited to:

- The amount of credit;*
- The total repayable and the size of the regular repayments;*
- The duration of the agreement;*
- The cost of the credit; and*
- The consumer's individual circumstances.*

What this means is that there isn't a one-size-fits-all approach to what is considered proportionate as any of these factors (or others) might influence what a reasonable and proportionate check ought to be.

While I'm not looking at the credit card application or the first credit limit increase I note that the second increase in 2015 took Ms B's limit from £16,000 to £21,000. This is a 31% increase, which I consider to be significant, on top of what I also believe to be an already high credit limit. I would expect, in this circumstance, the affordability check to be reasonably thorough.

MBNA has provided us with details of the checks it carried out prior to increasing this credit limit. These helped it to understand what Ms B's credit commitments were and to see how she was managing them. When MBNA assessed Ms B's original credit card application in 2006 (which I stress is not something I'm considering as part of my decision as it's time barred) it asked her to confirm her annual income, which according to its records she gave as £16,010. But I can't see that it asked Ms B for any updated information about her income in 2015. It also doesn't appear to have asked Ms B any questions to establish her normal monthly expenditure.

MBNA has told us it also used a consumer indebtedness index using information from credit reference agencies. The index is calculated without the need to determine specific details of monthly income. MBNA is, of course, entitled to use a variety of different sources to carry out a proportionate lending check, but it ought to know that the index is unlikely to give an accurate picture of a particular individual's circumstance.

MBNA told us while Ms B was making only the minimum payments in the months prior to the credit limit increase, she did clear a large amount of the balance (£12,800 over the minimum payment) in July 2015, and then conducted a balance transfer for £3,655 in September 2015. It's not clear to me if this was Ms B clearing or transferring the debt.

MBNA said it reviewed the credit limit increase with information provided by Ms B, as well as the information available on her credit file. It provided the results of the credit check it relied on. I can see the information they considered included defaulted accounts, County Court Judgements, bankruptcy declarations, and arrears. It said these checks gave no indication of financial difficulty or over indebtedness.

Based on this information, it said it was happy to approve the credit limit increase for Ms B. But MBNA hasn't provided this service with a copy of the information it says Ms B provided.

MBNA has said and Ms B has confirmed she was only making the minimum payments at the time of the increase. The balance at the time was £6,106. But I'm persuaded making minimum payments against a balance of £6,106 isn't sufficient to show that Ms B was or

would be able to take on debt up to £21,000. And Ms B herself has said she was shifting the balance around.

Subject to any further information I might receive I'm minded to say that increasing Ms B's credit limit from £16,000 to £21,000, representing a 31% increase, was significant. And MBNA was obligated to ensure she was able to take on this level of credit sustainably. I'm persuaded MBNA failed to carry out proportionate checks and relied only on how Ms B was handling her existing credit limit. While MBNA said it used information Ms B provided, it's not clear to me what that was. The original application was made in 2006, the second credit limit was in 2015. It is likely Ms B's income and expenditure would have changed.

Would reasonable and proportionate checks have shown that Ms B could sustainably repay the borrowing?

I'm persuaded MBNA should have sought more information regarding Ms B's income and expenditure prior to increasing her credit limit. But I don't believe I have enough evidence to rely on in order to conclude that Ms B couldn't sustainably repay the borrowing.

In her complaint to this service Ms B said the credit limit increases were more than her annual salary and she was close to the limit on several occasions. She said she rarely made more than the minimum payment and at best she transferred her balance from card to card. She also said the additional £5,000 lending absolutely made the difference between her struggling and 2 years later simply not having enough funds to manage. I'm not disputing Ms B's testimony. She's said that the weight of the debt has caused her a huge amount of stress and she has my sympathy. But without evidence of Ms B's financial situation at the time of the credit increase in 2015 it wouldn't be fair or reasonable for me to conclude, or find it likely, that Ms B wouldn't have been able to sustainably repay the borrowing, had MBNA carried out reasonable and proportionate checks.

Did MBNA act unfairly or unreasonably in some other way?

MBNA has said that Ms B did make contact with it regarding her financial difficulties in November 2017. It said it followed its processes and applied breathing space. Ms B said she agreed a payment plan but was subsequently told it wasn't enough and MBNA applied a default to her credit file eight months later. She said while she accepts the default it should have been applied at the time.

I do understand why Ms B would want the default to have been applied earlier because it would then come off the credit file earlier. But MBNA wasn't in a position to do this. It had a legal process to follow when Ms B fell into arrears in order to give Ms B the chance to catch up before a default would be applied.

MBNA has an obligation to treat customers who are in financial difficulties positively and sympathetically. It appears Ms B first alerted MBNA to her financial difficulties in November 2017. MBNA applied breathing space and set up a payment plan. So it does appear that it considered her circumstances and acted in line with its obligations.

Ms B replied to my provisional decision by providing her bank statements for the six months previous to the credit limit increase to help demonstrate her financial situation at the time, for my consideration.

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 realise this will come as a disappointment for Ms B but having done so I believe my provisional decision still stands. I'd like to thank Ms B for providing her bank statements which I've examined along with all the other evidence provided by both parties.

It's not possible for me to say what information MBNA would have requested of Ms B prior to the credit limit increase to establish whether payments would be affordable and sustainable. It could have requested bank statements as evidence or verification of income and to establish Ms B's expenditure. Had it asked for bank statements at the time I think it's likely Ms B would have provided a copy of the bank statements for the same account she has provided to this service. The bank statements Ms B has provided are for a joint account with her (then) husband.

The FCA's Consumer Credit sourcebook (CONC) is the specialist sourcebook for credit related regulated activities. It sets out the rules and guidance specific to consumer credit providers, such as MBNA. CONC 5 sets out a firm's obligations in relation to responsible lending.

In CONC 5.2A it says:

The firm must consider the customer's ability to make repayments under the agreement:

(2) out of, or using, one or more of the following:

(a) the customer's income;

(b) income from savings or assets jointly held by the customer with another person, income received by the customer jointly with another person or income received by another person in so far as it is reasonable to expect such income to be available to the customer to make repayments under the agreement;

As Ms B's payments to MBNA were coming out of her joint account with her husband, I think it reasonable to look at the income coming into the account as a whole as it is used to fund the credit card payments.

In the seven months prior to the credit limit increase the average income into Ms B's account was £4,270 per month. Approximately 60% of that income appears to come from a salary. The rest is made up mostly of cash and transfers into the account from another bank account. The income into the account is consistent and regular. I can see that there appear to be four revolving credit payments (e.g. credit cards) as well as two car finance payments going out each month. As well as what appears to be a small loan or shopping account payment. Again, these credit payments are consistent and regular and make up on average 30% of the income each month, this goes up to 50% when adding in Ms B's mortgage payment. Ms B does use the arranged overdraft facility (£500) almost every month, varying from a few pounds to several hundred pounds, but during the months when there is high usage I note that large payments (>£1,000) were made to holiday and leisure retailers.

The joint bank account appears to be servicing the household for regular utility bills, other joint household spending and leisure spending.

I'm not disputing Ms B when she says that in 2017 she was struggling financially, and I'm sorry to hear this. But to be fair and reasonable I must consider what MBNA knew or ought reasonably to have known at the time it increased her credit limit. Had MBNA requested to

see her bank statements in 2015, prior to the credit limit increase, there doesn't appear to be anything of concern that might suggest payments would be unaffordable at that time. Ms B appeared to be managing her bills and payments.

I've looked at Ms B's credit file. Although this only covers the past 6 years I can see that MBNA would have likely seen that Ms B had additional credit facilities in the form of credit cards. But again due to the passage of time I can't see anything on her current credit file which might indicate that Ms B would struggle with payments on a credit limit increase.

As I've noted earlier the increase in credit limit was significant. And a lender would also need to take into consideration whether a consumer would be able to afford the payments if they utilised the full credit limit. On a credit limit if utilised of £21,000 the minimum payments would be somewhere in the region of £480 per month and more if Ms B made efforts to reduce the debt. Again looking at the bank statements and the difference between Ms B's nondiscretionary against her discretionary spend it's not clear to me that MBNA would be able to conclude that payments would be unaffordable or unsustainable based on the joint income.

I do appreciate that Ms B's circumstances have clearly changed since the credit limit increase and I'm sorry to hear this. But I can't say that this was reasonably foreseeable by MBNA.

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 Ms B to accept or reject my decision before 24 February 2023.

Maxine Sutton
Ombudsman