

## **The complaint**

Mr W has complained that MBNA Limited was irresponsible when it increased the limit on his credit card in 2016.

## **What happened**

MBNA opened a credit card account for Mr W in 2004. This type of credit was an open-ended or running account facility. MBNA offered Mr W an increase in his credit limit from £10,200 to £15,200 in May 2016.

Mr W says that he hadn't requested an increase in his credit limit and the offer to increase it was communicated to him in an 'opt-out' manner. He said he had used the card almost up to its limit and at the time had four other credit cards with a combined credit limit of around £40,000, in addition to an unsecured loan of £10,000 and a mortgage. Mr W says MBNA should have seen that he was overindebted and not offered him more credit.

MBNA says that it increased Mr W's credit limit in line with his payment history and general account conduct. It didn't agree that it was irresponsible when it increased his credit limit in 2016 and didn't uphold his complaint.

Mr W brought his complaint to us. Our investigator assessed the complaint and recommended that it be upheld. They found that MBNA hadn't carried out a proportionate affordability check when it offered Mr W the limit increase and that such a check was likely to have demonstrated that Mr W would not have been able to make his repayments sustainably. They concluded that MBNA had been irresponsible when it offered further credit to Mr W and should pay him compensation.

MBNA didn't accept this recommendation. It said that it had acted in line with the regulations in place at the time and that our investigator's view was based on a retrospective review of information it wasn't required to have seen. MBNA also said that the rules at the time of the increase indicated that a business must undertake a reasonable assessment of the creditworthiness of a customer only before entering into a regulated credit agreement. After reviewing the bank statements Mr W provided to us, MBNA said that these showed that the credit limit given was affordable and, irrespective of how Mr W was managing his money, he had enough available income to manage a credit card facility.

MBNA asked for the complaint to come to an ombudsman to decide and it came to me. I issued a provisional decision on 22 September explaining why I thought Mr W's complaint should be upheld. Mr W agreed with my provisional decision but MBNA did not. Both parties provided some additional information for me to consider.

## **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.

Having considered everything again, including what both parties said in response to my provisional decision, I remain of the view that Mr W's complaint should be upheld. I appreciate that this will be very disappointing for MBNA and I'll set out again my reasons for upholding in this final decision and refer to the responses I've had where appropriate.

As I'd said in my provisional decision, when considering this complaint, I've had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as MBNA, need to abide by. MBNA will be aware of these and our approach to these sorts of complaints is set out on our website. I won't refer to the regulations in detail here but I will summarise them to reassure MBNA that I've considered those in place at the time.

I said in my provisional decision:

"Before entering into a credit agreement or increasing a limit under an existing credit agreement (CONC 6.2.1R ref. Section 55B(2) of the Consumer Credit Act), MBNA needed to check that a borrower could afford to meet their repayments sustainably. CONC 5.3.1G(1) stated that in making its assessment a lender should take into account more than assessing a customer's ability to repay the credit. In other words, MBNA needed to check Mr W could repay the credit out of his usual means, within a reasonable period of time, without having to borrow further and without experiencing financial difficulty or other adverse consequences.

In addition, CONC 6.7.2R stated that a firm must monitor a customer's repayment record and take appropriate action where there were signs of actual or possible repayment difficulties. This rule referred to the previous regulator's guidance, which said that such signs might include failing to make the minimum repayment or making a number of consecutive minimum repayments. The overarching requirement was that MBNA needed to pay due regard to Mr W's interests and treat him fairly.

Having considered everything, I plan to uphold Mr W's complaint. I've provisionally concluded that MBNA should have looked further into his circumstances before increasing his limit to £15,200 in 2016 and, had it done so, would likely have found out that further credit wasn't going to be sustainable for him. I appreciate that this will be a disappointing outcome for MBNA and I'll set out my reasoning in some detail. I'll also explain what I think needs to happen now to put things right for Mr W.

Mr W's card balance at the time was £10,038 and his credit limit was £10,200. I think it's evident that this credit increase was significant, being a 50% increase, which brought Mr W's credit limit to £15,200. If he were to repay this over five years, for example, he might need to repay somewhere between £400 and £500 a month. By late 2021, Mr W's balance was around £15,000 and the recommended monthly payment was over £500.

The regulations weren't prescriptive about what information lenders needed to gather before granting significant credit increases. However, as per CONC 5.2.4G, MBNA needed to consider what was appropriate and the risk of the credit not being sustainable for Mr W directly related to the amount of credit it was offering and the total charge for the credit relative to his financial situation.

MBNA said that it didn't have any affordability data related to this increase but did have some information from Mr W's credit file which showed that he had unsecured debts of £30,750. MBNA said that it relied on credit reference agency scoring when making its decision which didn't flag that Mr W was a customer who needed careful management due to high levels of indebtedness.

The checks MBNA carried out prior to increasing Mr W's limit might have been

appropriate for other customers in other circumstances. However, I don't consider that they were sufficient in Mr W's particular financial situation, which MBNA was required to consider (CONC 5.2.1R ref. ILG 4.1 – this being a “borrower-focussed test”).

MBNA says that the credit file information it considered showed that Mr W had been managing his existing debt well, with no recent missed payments, no defaults or county court judgements. However, MBNA knew that Mr W had unsecured debts of over £30,000 and was almost up to the limit of £10,200 on this credit card. It also knew that he had made the minimum payment for the last five months at least, was paying for parking and fuel with his card and taking out cash advances. It seems to me that MBNA had enough information here to suspect that Mr W was having financial difficulty and it should have investigated this in more detail before offering him further credit in order to assess the risk to him of experiencing adverse consequences, irrespective of its risk appetite.

I don't know if the credit file information MBNA considered included the amount Mr W was paying towards his existing debts each month, or what his usual living costs were. I think it would have been appropriate in these circumstances to consider this information along with information about Mr W's income, howsoever it obtained this. I have reviewed Mr W's bank statements from the time, which I think are a reasonable proxy for what MBNA might have found out, had it looked into Mr W's circumstances in greater depth. As mentioned, we have sent a copy of these to MBNA.”

MBNA said in response to the above that Mr W wasn't solely reliant on his credit card for fuel and parking purchases and that it was unfair to use this as an argument that he was in financial difficulty. I can accept that these spending examples alone would not be a strong indication of financial difficulty however, given the context in which these happened, I think the fact that Mr W was using his credit card for everyday spending is a reasonable contributing argument.

MBNA also said that “The CONC 5.3.1G(1) is for guidance, referenced by the ‘G’, so we feel any additional checks would be determined by our lending strategy and / or risk policy at the time. We don't agree that it was ‘needed’ or was a requirement.” This particular regulation states what lenders “should” do so I don't think I've misquoted in referring to this as something MBNA needed to do. When coming to a fair and reasonable decision on this complaint I've considered whether or not MBNA acted in line with these regulations irrespective of how they were defined in the handbook.

I went on to say in my provisional decision that:

“The statements for Mr W's sole bank account show that his usual monthly income was around £4,430. His payments to creditors came to around £1,120 (excluding his MBNA payments), bills were approximately £165 and, conservatively, Mr W paid about £150 a month for food and travel. This account had an overdraft facility of £2,000 which Mr W fully utilised and occasionally exceeded. Mr W also paid £2,400 to £2,500 a month into his joint account. This covered, for example, a joint mortgage of £1,119, council tax and other bills of about £550, and household food and travel costs of upwards of £600. The £200 overdraft facility was fully utilised and occasionally exceeded.

It seems to me that this would usually have left Mr W with around £500 each month to cover anything else not identifiable on the bank statements (for example clothing, household items, holidays etc) or any unexpected costs. I understand that Mr W had two dependents. As mentioned Mr W's credit card payments might reach £400 to £500 on this level of credit in order to repay it within a reasonable period of time. I've noted that he was already spending a significant proportion of his salary repaying existing debt.”

MBNA said in response that Mr W's mortgage repayment indicated that his household had an income of around £84,000 which was in line with the household income of £80,000 provided in Mr W's initial application form. MBNA says that this indicates, based on its lending criteria, that the credit was affordable. I didn't make any finding that the income level MBNA relied on was incorrect, rather that further investigation of Mr W's circumstances would likely have revealed a level of expenses which rendered the credit unsustainable.

I went on to say in my provisional decision:

"I have considered that Mr W's wife might have been contributing to the household spend. Mr W said that she was training during the first part of 2016 and began earning later in the year. At the time of the increase he was the sole contributor to the household income and continued to be the main earner. Mr W provided supporting information for this and I am satisfied that this was likely to have been the case."

MBNA said in response that "There are regular standing order payments to an account in the name of [Ms W] with a reference of "[Mr W]'s Loan" for £390. It is fair to assume that [Ms W] has a sole account with payments of £390 going into it on 29<sup>th</sup> February 2016, 29<sup>th</sup> March 2016 and 27<sup>th</sup> April 2016. Without sight of [Ms W]'s sole bank account, it would be reasonable to add £390 to the available income as that is remaining in the household and not going to creditors". Given that these transfers are regular and are labelled "[Mr W]'s loan" it seems more reasonable to me to assume that these payments were for money that Mr W owed. Mr W confirmed that these payments to his wife were to meet repayments on a loan she had taken out on his behalf. I remain of the view that it's not likely these sums were available to Mr W to meet his credit card repayments.

I went on to say in my provisional decision:

"I've noted transfers to and from an investment account on Mr W's sole bank account statements. Mr W said the value of these shares was about £7,500 at the time and provided account information which supports this. He also said that he sold some shares on occasion to make ends meet and his share statement for 2016 supports this. I have discounted these as being available to meet Mr W's credit card repayments, given the value of the shares at the time of the increase and bearing in mind CONC 5.3.1G(6)(C) which states that making repayments sustainably means being able to do so out of income or savings, without having to realise security or assets. Mr W told us that he eventually re-mortgaged in order to clear his total credit card debts of about £45,000."

In response to this, MBNA said that Mr W paid more into his investment account than he withdrew in the month of March 2016. This indicates that he was not reliant on the investment to make ends meet and that it was more of a savings account than an actual asset or security. As I'd said in my provisional decision, Mr W's share statement for 2016 supported what he'd said about selling his shares to meet his living costs. While his bank statements for a single month might show that he paid more towards his investments in that month, from the information I've seen covering from end May to end November 2016 to they were overall reducing.

MBNA also asked me to confirm the date Mr W re-mortgaged as *"... this may have been a few years later and not a direct correlation to the limit increase provided by MBNA. The original complaint letter received suggests the re-mortgage took place somewhere after the start of 2020 after he has taken out additional borrowing (some 4 years after the credit limit increase by MBNA). We note that [Mr W] has only made a substantial payment of £14,200 to reduce his MBNA balance in May 2022. This does not seem to be in line with the customer's statement that he re-mortgaged 'in order to clear his total credit card*

*debts."*

Mr W told us that he was unable to repay his credit card debts until June of this year when he was able to consolidate those debts by taking out a new mortgage. He explained that he'd applied to increase his mortgage borrowing with his existing lender but was refused and it took some time to arrange borrowing from elsewhere. Mr W may not have entirely cleared his credit card debt with MBNA, but I am satisfied that he borrowed in order to address this and his other credit card debts. Mr W provided proof of his mortgage decline and acceptance with a new lender, which cleared his existing mortgage and provided him with just over £35,000 which he's said he used to clear his credit card debts. He was unable to borrow to clear the full amount he owed on credit and £35,000 was the largest increase he could obtain. As MBNA advised, Mr W then paid a significant amount towards his credit card.

In summary, having carefully considered everything both parties have told me, I've concluded that Mr W wasn't in a position to be able to meet his repayments for further credit sustainably. I think it's likely MBNA would have learnt this had it carried out a proportionate check before increasing his credit limit in 2016, and so I've concluded that MBNA was irresponsible to have agreed further credit for him at that time.

### **Putting things right**

Where we find credit to have been agreed irresponsibly, our approach to putting things right is to refund any interest, fees or charges associated with the credit that were paid by the borrower. In addition, we usually direct the lender to pay a refund of 8% per annum simple interest on these payments where the borrower was unfairly deprived of their money. We'd expect the borrower to repay the capital borrowed as they have had the use of these funds.

I've concluded that MBNA was irresponsible when it increased Mr W's limit in 2016. In order to put Mr W back into the position he would have been in had this not happened means he shouldn't have to pay any interest or charges on credit granted above his existing limit of £10,200.

In summary, MBNA should:

- Rework Mr W's account to remove all interest and charges that have been applied to balances above £10,200; and
- If the effect of this reworking results in a credit balance, then this should be refunded to Mr W along with 8% simple interest\* on the overpayments from the date they were made to the date of settlement. In this case, MBNA should remove any adverse information reported to Mr W's credit file after 4 May 2016; or
- If an outstanding balance remains on the account once these adjustments have been made MBNA needs to ensure that Mr W is only liable for this adjusted balance and arrange an affordable repayment plan with him. Once Mr W has cleared the outstanding balance, any adverse information recorded after 4 May 2016 in relation to the account should be removed from his credit file.

\* HM Revenue & Customs requires MBNA to take off tax from this interest. MBNA must give Mr W a certificate showing how much tax it's taken off if he asks for one.

### **My final decision**

For the reasons I've explained above, I am upholding Mr W's complaint about MBNA Limited and it needs to take the steps I've set out in order to put things right for him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or

reject my decision before 28 November 2022.

Michelle Boundy  
**Ombudsman**