

The complaint

Mrs R complains that Lloyds Bank plc (trading as MBNA) was irresponsible to approve her credit card application.

What happened

Mrs R was approved for a credit card with MBNA on 15 August 2018. She was initially given a £7,400 credit limit which was increased to £9,000 in March 2019 and then to £10,000 in November 2019.

Mrs R says that she doesn't believe that MBNA carried out the correct checks before it agreed to the credit card. She said that the lending was clearly unaffordable to her and she was struggling with her mental health at the time. Mrs R says that she is struggling financially and has tried to release equity from her house but has been declined due to her debt management plan and her poor credit rating.

MBNA says it asked Mrs R about her income and checked her credit file. It said she passed all its checks and it agreed to offer her a credit card with a £7,400 limit. It then increased her limit to £9,000 in March 2019 and to £10,000 in December 2019 following further credit checks. It says that, as there has been no bank error and it has an obligation to report accurate information, it cannot remove the adverse information from Mrs R's credit file.

Our adjudicator recommended the complaint should be upheld. She found that proportionate checks would have shown that Mrs R's expenditure exceeded her income each month and therefore further borrowing was unaffordable to her. She recommended that all interest and charges should be refunded to Mrs R and that adverse information should be removed from her credit file.

MBNA responded to say, in summary, that the rules in place at the time did not require that level of affordability assessment and it was not proportionate given what it knew about Mrs R's income, housing costs and credit history. It adds that Mrs R transferred money into a savings account each month and that is not consistent with a customer experiencing financial difficulties.

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.

As MBNA said in its response, I need to take into account the relevant rules and guidance that were in place at the time of the lending, along with good industry practice.

The Financial Conduct Authority (FCA) was the regulator when MBNA lent to Mrs R. Its rules and guidance obliged it to lend responsibly. As set out in the regulator's Consumer Credit Sourcebook (CONC), this meant that MBNA needed to take reasonable and proportionate steps to assess whether or not a borrower could afford to meet their loan repayments in a sustainable manner over the lifetime of the agreement.

At the time of the lending CONC 5.3.1G stated that:

1. *In making the creditworthiness assessment or the assessment required ... a firm should take into account more than assessing the customer's ability to repay the credit.*
2. *The creditworthiness assessment and the assessment required ... should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.*

Repaying debt in a sustainable manner was defined as being able to meet repayments out of normal income while meeting other reasonable commitments; without having to borrow further to meet these repayments; without having to realise security or assets (CONC 5.3.1G - 6) or without incurring or increasing problem indebtedness (ILG 4.3).

(The Office of Fair Trading was the previous regulator and it produced a document entitled 'Irresponsible Lending Guidance' which the FCA referenced in its consumer handbook. CONC 5.3.1G – 6 specifically referenced ILG 4.3.)

In general, I'd expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance, potentially by carrying out more detailed checks:

- the *lower* a person's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *longer* the term of the loan (reflecting the fact that the total cost of credit is likely to be greater and the borrower's required to make payments for an extended period).

In addition, as per CONC 5.3.1G – 4b: it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure, on a statement of those matters made by the customer.

Bearing all of this in mind, in coming to a decision on Mrs R's case, I have considered the following questions:

- Did MBNA complete reasonable and proportionate checks when assessing Mrs R's loan application to satisfy itself that she would be able to repay the loan in a sustainable way?
 - If not, what would reasonable and proportionate checks have shown?

- Did MBNA make a fair lending decision?
- Did MBNA act unfairly or unreasonably in some other way?

I've seen evidence to show MBNA asked about Mrs R's income and housing costs and checked her credit file. I acknowledge it no longer has a copy of its affordability calculations for August 2018 but based on the information it received I'm not satisfied those checks went far enough. I say that because:

- The credit card was an open-ended account and so MBNA needed to ensure any repayments were sustainably affordable long term;
- Based on Mrs R's existing debts, she was already committed to repaying almost 24% of her declared income on credit;
 - The new credit card took this figure up to 35%;
- MBNA used an estimate for Mrs R's living expenses which, given her credit commitments, I don't find to be proportionate in the circumstances.

Mrs R has provided bank statements from the time which I've used as a reasonable proxy for what proportionate checks would have shown:

- Although Mrs R's income from employment was slightly less than the salary she'd declared, she also had other regular income taking her average monthly income to £2,647;
- Mrs R's mortgage was £724, with council tax, utilities and insurance totalling £370;
- Phone and TV costs were £144 with tax and other direct debits coming to £252;
- With existing credit commitments of £457, this left Mrs R with £700 for other regular expenditure, including food, for herself and her two children.
- I can see expenditure on food and groceries of around £400 in the month prior to the credit card application.

If MBNA had carried out proportionate checks, I think it would have seen that Mrs R could not sustainably afford the repayments on a further credit card with a limit of £7,400 when the minimum repayments on such an amount would be over £220. So I'm satisfied that it was irresponsible for MBNA to approve the new credit card and that minimum credit commitments of over 25% of Mrs R's income going forwards were likely to be unsustainable.

I've also considered Mrs R's circumstances at the times of the credit limit increases and I can see that her financial situation had not improved. Indeed, I note that MBNA recorded that Mrs R had made six consecutive minimum payments in October 2019 – just a month before it increased her credit limit for the second time.

With regard to what MBNA has said about the regular transfers to Mrs R's savings account, I accept that to be the case. However, those transfers were actually outweighed by money being transferred in the opposite direction each month. In fact, on average, Mrs R's savings decreased by about £400 per month in the lead up to the credit card application and she had less than £1,200 in the account by the beginning of August 2018. Given that this indicates that Mrs R's expenditure was already exceeding her income to the tune of £400 per month,

she could only afford to use her savings in this way for a further three months, even before the new credit card was approved.

Finally, I note what Mrs R says about her mental health at the time of the lending. I completely sympathise with the position in which she found herself and understand how this affected her financial decision-making, but I need to consider whether MBNA acted unreasonably as a result. Based on the evidence I've seen, I can't see that Mrs R made MBNA aware of her mental health issues until 2020. As this was after the time of the lending decisions, I can't conclude MBNA acted unfairly in this regard.

In summary, I find it was irresponsible to lend to Mrs R and MBNA did not make a fair lending decision, although I cannot conclude that it acted unfairly or unreasonably in any other way.

My final decision

My decision is that I uphold this complaint. Lloyds Bank plc (trading as MBNA) should:

- Rework the account removing all interest and charges that have been applied.
 - If the rework results in a credit balance, this should be refunded to Mrs R 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 Mrs R's credit file.
 - Or, if after the rework there is still an outstanding balance, MBNA should arrange an affordable repayment plan with Mrs R for the remaining amount. Once Mrs R has cleared the balance, any adverse information in relation to the account should be removed from her credit file.

*HM Revenue & Customs requires MBNA to deduct tax from this interest. It must give Mrs R 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.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 25 April 2023.

Amanda Williams
Ombudsman