

The complaint

Mr B complains that MBNA Limited irresponsibly provided him with two credit cards.

What happened

MBNA provided Mr B with a credit card in March 2016 with a credit limit of £8,000. I'll refer to this as Card 1 throughout this decision. The credit limit on Card 1 was increased on three occasions until it reached £19,100 in June 2018. MBNA subsequently provided Mr B with a second credit card in February 2020 with a limit of £5,000. I'll refer to this as Card 2. Shortly after this, some of the credit limit from Card 1 was redistributed onto Card 2.

In summary, Mr B says MBNA's lending decisions put him into a vulnerable position given his circumstances, and he couldn't afford the repayments each month. He says MBNA didn't lend to him responsibly and didn't properly check his existing levels of debt. Mr B also pointed out that both cards had promotional balance transfer offers, and MBNA wasn't clear about how much he would need to pay once the promotional offers ended. He says instead, MBNA allowed him to pay the minimum payment required each month despite being able to see this would likely leave him with a large balance at the end of the interest-free period. Mr B complained to MBNA.

MBNA reviewed Mr B's complaint and issued a final response letter. It didn't comment on the lending decisions made on Card 1, but it didn't think that Card 2 was irresponsibly provided. In summary, MBNA said it had lent based on information Mr B supplied and also what it had gathered from credit reference agency (CRA) checks. In further correspondence sent to this service, MBNA confirmed it didn't think Card 1 and the limit increases on it had been provided irresponsibly either.

Mr B remained unhappy with MBNA's response, so he brought his complaint to this service. One of our investigators reviewed matters and thought that MBNA's initial checks weren't reasonable or proportionate and had it carried out further checks, it would have seen that Mr B couldn't afford the credit in March 2016. Our investigator also thought the subsequent lending decisions wouldn't have happened if MBNA had completed proportionate checks.

MBNA disagreed with our investigator's findings. In summary, it thought its checks were proportionate and showed that Mr B could afford the credit. It also said Mr B utilised promotional balance transfer offers, suggesting he'd cleared his outstanding credit card debts. MBNA also pointed out that Mr B had been paying the minimum repayment throughout the lending history and had no missed payments until June 2021.

In summary, Mr B said he'd asked MBNA to put his account on hold whilst matters were being investigated by this service, but he'd only managed to secure temporary interest freezes for 30 days at a time. He explained his concerns about the impact this was having on his credit file and explained that matters were impacting his mental health.

There was some further correspondence between this service and the parties, and our investigator tried to reach a mediated resolution. Our investigator then ultimately reviewed matters again. In summary, he thought that there wasn't anything to suggest the initial credit

card limit and the first increase on Card 1 were going to be unsustainable for Mr B. However, he thought that all subsequent lending decisions were always going to be unsustainable.

MBNA disagreed with our investigator's opinion and mostly repeated its earlier arguments. Mr B also responded and repeated his earlier points. He also said that MBNA had since sent him an automated letter to advise his account had been closed and that it would register a default on his credit file. Mr B said he'd been asking MBNA to place 30-day holds on his account and he'd had no notice that his account would be closed and passed to recoveries.

I issued a provisional decision where I said, in summary, that I didn't think MBNA completed reasonable or proportionate checks into Mr B's circumstances by the time of the third lending decision. I was persuaded that had it carried out further checks into Mr B's circumstances, it would have seen he was often using his overdraft at that time. I also thought MBNA would have concluded that Mr B was increasing his overall indebtedness. Overall, I didn't think it should have lent to him from this point onwards.

I acknowledged Mr B's argument that MBNA didn't treat him fairly when he fell into financial difficulties. However, I noted that MBNA provided interest freezes on Mr B's request for many months. Overall, I thought it had taken reasonable steps in the circumstances. In relation to the promotional offers, I thought the account statements, the credit agreement and the terms and conditions provided sufficient information about this. I also acknowledged Mr B's comments that MBNA said a default would soon be registered on the account, but I explained I couldn't make any findings about something that hadn't yet happened or been complained about, or that MBNA hadn't yet had the chance to respond to first.

Mr B responded to the provisional decision and, in summary, raised several points. He asked some questions about the proposed redress. He also said that a default had been registered, which he'd since complained about, and MBNA had provided a final response to. Mr B also explained he was being made redundant and the adverse information recorded was impacting his ability to find employment. So, he asked whether the adverse information could be removed first, after which point he would be happy to engage with MBNA to agree a repayment plan for any remaining debt.

This service acknowledged the difficult position Mr B was in but reiterated that if an outstanding balance remained once the interest, fees, charges and insurances had been refunded, we'd then ask the firm to arrange a repayment plan for the outstanding balance, and we usually wouldn't ask a firm to remove any adverse information until the balance had been cleared. This service also acknowledged Mr B's point about the default and said this was arguably a separate issue. But I'd noted that the default was registered due to the duration that payment hadn't been made to the account. So, I wasn't persuaded the outcome was impacted here. Mr B repeated some of his earlier points in response, and said he thought he'd be given some warning before the account defaulted. He also said the only reason the 30-day interest freezes were put on the account was because the parties expected that a resolution to this matter would be due soon.

MBNA also responded to the provisional decision and asked to see the bank statements that had been relied on. Upon reviewing these, it asked several questions, including about some incoming payments from what appeared to be Mr B's other account and what may have been additional income sources. When this service asked Mr B about this, he provided the statements for his other account which he said he opened in November 2017 and essentially held a zero balance since then, and also provided answers to MBNA's questions. In summary, he explained that he occasionally did some promotional work to generate some more money, but this amounted to little and didn't help.

Mr B also explained some of the larger payments MBNA recognised that were coming into the account effectively created a debt elsewhere, and Mr B incurred these debts in order to bring the money into his current account.

This service provided the above information to MBNA, and also reiterated that the provisional decision outlined that Mr B's statements showed he was often overdrawn and sometimes in his unarranged overdraft. So, I was persuaded that the management of Mr B's account in itself at the relevant times would have likely shown that any further lending would've been unsustainable. This service then asked MBNA for any final comments. MBNA thanked the service for providing the requested information and confirmed it had no further comments to add.

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 done so, I haven't changed the opinion I expressed in my provisional decision. I've explained my reasoning below. But before I do so, I want to say that I have taken on board all of the additional comments that both Mr B and MBNA raised in response to the provisional decision.

Although a number of issues have been raised, this decision only addresses those issues I consider to be materially relevant to the crux of the complaint. However, I've given careful consideration to all of the submissions made to date.

Mr B has raised a new concern since the complaint was referred to our service. As I understand it, MBNA has recorded a default on his credit file. Whilst I appreciate Mr B's concern here, I'm mindful that this is arguably a separate issue that should be dealt with separately, as this didn't form part of the original complaint made to MBNA or to this service. However, I appreciate that Mr B has waited some time for an answer to his overall complaint. So, it might be helpful to explain that the reason the account has defaulted is because of the duration where payments were not being made to the account. And, I note MBNA encouraged Mr B to contact it to discuss the available options, including coming to a repayment arrangement. This didn't happen, so I'm not persuaded that this impacts the outcome of this complaint. I'll now move on to address the other complaint points raised.

The rules and regulations in place at the time MBNA provided Mr B with the credit cards and limit increases, required it to carry out a reasonable and proportionate assessment of whether he could afford to repay what he owed in a sustainable manner. This is sometimes referred to as an 'affordability assessment' or 'affordability check'.

The checks had to be 'borrower' focused. This means MBNA had to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for Mr B. In other words, it wasn't enough for MBNA to consider the likelihood of it getting the funds back or whether Mr B's circumstances met its lending criteria – it had to consider if Mr B could sustainably repay the lending it was providing to him.

Checks also had to be 'proportionate' to the specific circumstances of the lending. In general, what constitutes a proportionate affordability check will be dependent on a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they were seeking. I've kept all of this in mind when thinking about whether MBNA did what it needed to before lending to Mr B.

Mr B applied for Card 1 in March 2016. MBNA said it asked Mr B for his gross annual income, which he declared as £37,000. MBNA doesn't appear to have verified this information, however it does appear to be the case that this was broadly Mr B's income. MBNA also said it carried out a full credit check which showed no obvious signs of financial difficulty. This credit check also showed Mr B had £12,700 in available credit limits, of which he had a £7,025 balance, and a balance of £3,897 in loans and/or hire purchase agreements. I've also considered that Mr B utilised promotional rates on balance transfers when he transferred existing debt onto the card. On balance, considering that MBNA's checks didn't reveal any obvious financial issues here, I think the checks MBNA completed were reasonable and proportionate and it wasn't wrong to issue the card with a limit of £8,000.

In October 2016, MBNA proposed a credit limit increase from £8,000 to £11,100 and this was subsequently approved in December 2016. MBNA says that Mr B had been managing his account well in the months until the limit was increased. Its credit checks showed no obvious financial difficulties such as defaults. There's an argument to be made that MBNA could have checked that Mr B's income hadn't changed, or it could've completed a further credit check to review Mr B's access to existing credit. But I don't think this would've showed a substantial increase in access to credit from the information I've seen.

MBNA also saw that Mr B had taken advantage of promotional balance transfer offers at 0% shortly after the card was opened. So, on balance, I can see why MBNA might have thought that Mr B was taking steps to reduce his overall indebtedness here and saving money on the interest he would have been paying on debts elsewhere. So, considering all this, I don't think the increase to £11,100 on Card 1 was unreasonable either.

Mr B's limit was increased again on Card 1 in November 2017 to £16,100. I appreciate that MBNA's credit checks still didn't highlight any obvious signs of difficulties and Mr B had declared a higher gross annual income of £40,000. But this was now a significant amount of credit which was more than double the original credit limit MBNA gave Mr B the previous year. And just because Mr B was managing to avoid difficulties on the credit he had, this in itself doesn't mean that he could pay a significant amount of additional funds.

I've reviewed Mr B's current account statements to build a picture of his circumstances at the time, and what MBNA likely would have seen had it carried out further checks. Having reviewed these, I can see Mr B was using his overdraft regularly in the months leading up to this increase. Whilst there were occasions where Mr B's account was in credit, this was often only for a few days at the most following when he'd been paid. The account was then in overdraft again soon afterwards. Mr B was also sometimes in his unarranged overdraft, and incurred fees as a result.

I've considered MBNA's argument that Mr B appeared to be using the promotional offers to clear his debts. However, I think MBNA would have likely concluded that Mr B was increasing his overall indebtedness, had it carried out further checks into his circumstances. I also think it's fair to say that by this lending decision, it ought to have seen a pattern emerging, in that Mr B was taking more credit and transferring balances over to the account, suggesting he was continuing to spend on other credit facilities. As our investigator also pointed out, Mr B's minimum payments became unaffordable when the promotional offers ended, which ought to have been an important consideration for MBNA, given that the promotional offers were temporary and Mr B's indebtedness was increasing during this period rather than reducing. So, I think it was irresponsible to increase Mr B's limit to £16,100.

Having reviewed Mr B's circumstances in the years following this, I'm not persuaded they changed for the better either, so as to say that further lending would've been sustainable.

So, for the avoidance of doubt, I also think that the credit limit increase to £19,100 in June 2018 on Card 1 and the £5,000 limit on Card 2 in February 2020 were also irresponsibly provided.

I've considered MBNA's questions related to some incoming payments to Mr B's account over the years. As outlined earlier in this decision, Mr B explained some of the larger payments that were coming into the account effectively created a debt elsewhere, and Mr B incurred these debts in order to bring the money into his current account. With this in mind, this information doesn't change my findings outlined above. And, as explained in previous correspondence with MBNA, I'm persuaded that the management of Mr B's account in itself at the relevant times would have likely shown that any further lending would've been unsustainable. So, I'll need to next think about how MBNA puts matters right, which I'll come onto later in this decision.

Mr B has also said MBNA hasn't treated him fairly when he told it he was experiencing financial difficulties. MBNA initially agreed an interest-freeze for five months in the initial final response letter and encouraged Mr B to contact its collections team following this if he thought the payment would still be unaffordable. MBNA then agreed to further interest-freezes for a number of months, more recently for 30 days each time.

As I understand it, Mr B didn't want to enter a repayment plan because of concerns about how that would affect his credit file. He has asked MBNA to continue applying interest-freezes whilst the complaint was being reviewed. However, I can't fairly say that MBNA hasn't taken reasonable steps here. It agreed to offer Mr B interest-freezes for several months as he had requested. The contact notes show it also told Mr B the interest-freezes were only a short-term solution, and it encouraged him to contact the relevant department to complete a full review of his circumstances and discuss his options, including coming to an arrangement. So overall, I think MBNA has taken reasonable steps in the circumstances.

I also note Mr B has raised that MBNA weren't clear about when the promotional offers on the cards would end. However, I'm persuaded that the account statements, the credit agreement and the terms and conditions provide sufficient information here, including the dates the promotional offers end, the standard monthly interest rate for balance transfers and also how the monthly minimum repayment is calculated. So, I don't think MBNA needed to do anything further in this regard.

Fair compensation – what MBNA should do to put things right

In most cases where credit has been provided where it shouldn't have been, it would be fair and reasonable for the lender to refund any interest and charges paid by the borrower. And, the borrower would usually be expected to repay any remaining amount of the money they had been lent. So, I'd expect Mr B to pay back the money he was lent, but not the interest.

I note that Mr B has asked for the adverse information to be removed before the outstanding balance is paid off. As explained in previous communications with Mr B, in the event that an outstanding balance remains, MBNA would be directed to remove the adverse information only at the point that the outstanding balance is repaid. In this event, an outstanding balance would remain on the account, which he would be expected to repay.

With this in mind, MBNA should put things right for Mr B by doing the following, in relation to each card:

Card 1

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £11,100.
- If the rework results in a credit balance on the account, this should be refunded to Mr B along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. And, MBNA should remove any adverse information reported to Mr B's credit file about this account after November 2017.
- Or, if after the rework an outstanding balance remains, MBNA should arrange an affordable repayment plan with Mr B for the remaining amount. Once Mr B has cleared the outstanding balance, any adverse information recorded after November 2017 in relation to the account should be removed from his credit file.

Card 2

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied.
- If the rework results in a credit balance, this should be refunded to Mr B 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 Mr B's credit file.
- Or, if after the rework there is still an outstanding balance, MBNA should arrange an affordable repayment plan with Mr B for the remaining amount. Once Mr B has cleared the balance, any adverse information 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 B a certificate showing how much tax it has taken off if he asks for one.

My final decision

I partially uphold this complaint and direct MBNA Limited to settle Mr B's complaint in the way that I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 27 June 2023.

Hana Yousef
Ombudsman