

The complaint

Mr C complains that MBNA Limited irresponsibly provided him with a credit card account.

What happened

In December 2017, MBNA opened the account with a credit limit of £1,000. No increases to the limit were applied.

In 2023, Mr C complained to MBNA that it had lent to him irresponsibly in 2017, causing him financial difficulty.

MBNA didn't uphold the complaint. It said it had carried out appropriate checks which would have showed Mr C could afford the credit he was provided with.

Unhappy with MBNA's response, Mr C complained to this service. Our investigator recommended that Mr C's complaint should be upheld. They believed, in essence and on balance, that MBNA hadn't carried out sufficient checks to ensure Mr C could afford the credit. They said if it had, it would have seen that Mr C couldn't afford the credit in his circumstances.

MBNA didn't agree with the investigator's findings. It said it had carried out sufficient checks and that, even if further checks were undertaken, they wouldn't have demonstrated that the lending was unaffordable for Mr C.

Because the investigator couldn't resolve the complaint informally, it was passed to me to review afresh.

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 uphold this complaint. I'll explain why.

MBNA was required to complete proportionate affordability checks prior to advancing credit to Mr C. What's considered proportionate will vary in each case as it is unique to each lending decision. In deciding how thorough a check should be, MBNA needed to consider things such as (but not limited to) the amount of credit being advanced, the type of credit, the size and frequency of the repayments, the cost of the borrowing and Mr C's personal circumstances.

I can't say for sure what information MBNA did obtain since the evidence from the time's limited. As MBNA points out, several years have passed since its lending decision and so it no longer retains full details from that time.

With that in mind, I've looked very carefully at the information that's been provided by the parties to piece together, as best I can, the likely state of Mr C's financial situation both in December 2017 and the months leading up to that time.

To do so, I've placed emphasis on Mr C's bank statements from 2017 and the credit report he's sent us.

I firstly need to consider what affordability checks were undertaken by MBNA and think about whether they were proportionate. In applying for the credit, Mr C declared that he was employed and had a gross annual income of £20,000. In addition to this, MBNA says it obtained information from a credit reference agency (CRA). MBNA says these checks revealed nothing of concern and that Mr C's application met its lending criteria for a credit limit of £1,000.

Unfortunately, MBNA hasn't been able to provide a copy of the results of the CRA's checks. But, from Mr C's bank statements from 2017, I can see he made several payments for short-term high-cost borrowing. This is an expensive way of borrowing money and can sometimes indicate financial difficulty. MBNA says payday loans wouldn't have been visible to it from the checks done at the time but I'm not clear as to why that's the case.

In addition, Mr C's provided evidence to show he defaulted on one of the other credit accounts he'd held in March 2017 – just a few months before MBNA decided to lend to him. It's reasonable to think this ought to have appeared on any checks carried out by the CRA.

In any event, I think adequate checks ought to have revealed the default and the short-term lending to MBNA. If that had happened, I consider it possible MBNA would have refused the application or, at the very least, would have wanted to undertake further checks to satisfy itself that the credit was affordable for Mr C. To that extent, I consider it reasonable to take account of Mr C's bank statements as these would help it to create a picture of his finances at that time.

Having reviewed Mr C's bank statements in the months leading up to December 2017, I note that he was paying a significant amount of his disposable income to pay short-term and other creditors. Given his income, I'm satisfied his levels of debt were comparatively high and that this, together with his other outgoings, would have left him with very little disposable income each month.

I've thought carefully about everything MBNA's said, including that the credit card account aided Mr C's financial situation by helping him break the cycle of arranging short-term high-cost lending. That said, I've placed emphasis on Mr C's circumstances at the time of MBNA's lending decision rather than attempt to approach the complaint with the benefit of hindsight.

Overall, I think if MBNA had carried out proportionate checks, it would have declined Mr C's application on the basis that the lending was unaffordable. As such, I'm persuaded it lent to him irresponsibly.

Putting things right

MBNA should put things right for Mr C from the start of the credit card account, albeit he's had the benefit of the money borrowed and so may need to repay the principal amounts. So, MBNA should:

- Rework Mr C's credit card account so that all the interest, fees and charges applied to it from the start are removed.

- If an outstanding balance remains on the account once these adjustments have been made, MBNA should contact Mr C to arrange a suitable repayment plan for this.
- If no outstanding balance remains, any relevant adverse information should be removed from the credit file.

And

- If the refund means there's no remaining balance on the account, any extra should be treated as overpayments and returned to Mr C.

And

- Pay interest of 8% simple a year on any overpayments from the date they were made (if they were) to the date of settlement†.

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

My final decision

For the reasons given, I uphold this complaint. I require MBNA Limited to put things right for Mr C as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 May 2024.

Nimish Patel
Ombudsman