DRN-4784739

The complaint

Mrs F is complaining about MBNA Limited because she says it lent irresponsibly when providing her a credit card she couldn't afford.

What happened

In June 2018, following her application, MBNA gave Mrs F a credit card with a limit of £6,300. In February 2020, it increased the limit to £9,800.

Our investigator concluded the complaint should be upheld. She felt MBNA should have carried out a more detailed affordability check and, having done so, declined to lend.

MBNA didn't accept the investigator's assessment and made the following key points:

- Its affordability checks were proportionate to the lending and it wasn't required to check Mrs F's bank statements.
- While Mrs F's bank statements show she earned less than declared in her application, it was also entitled to rely on the figure it was given.
- Regardless, Mrs F's bank statements from before the lending show she had sufficient disposable income to afford a monthly repayment equivalent to 3% of the initial credit limit.
- While Mrs F was continuously overdrawn on her current account, this was due to poor account management rather than a lack of affordability.
- Mrs F's management of the MBNA card has been excellent and doesn't show any signs of financial difficulty.

The complaint has now been referred to me for review.

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've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

Before going any further, Mrs F's complaint referred to the decisions to increase her credit limit to £6,300 and £9,800, whereas the £6,300 limit was actually given from the outset. From the rest of Mrs F's submissions, I think it's clear she's complaining about all lending decisions associated with the card and that's the complaint I've considered.

Before lending to Mrs F, MBNA was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider in respect of each lending decision are:

- Did MBNA complete reasonable and proportionate checks to establish Mrs F would be able to repay the credit in a sustainable way?

- If so, was the decision to lend fair and reasonable?

- If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?

The rules, regulations and good industry practice in place at the time the credit was approved required MBNA to carry out a proportionate and borrower-focused assessment of whether Mrs F could afford the repayments. This assessment also had to consider whether the credit could be repaid sustainably. In practice this meant MBNA had to satisfy itself that making payments to the credit wouldn't cause undue difficulty or adverse consequences. In other words, it wasn't enough to simply think about the likelihood of her making payments, it had to consider the impact of the repayments on Mrs F.

The affordability assessment and associated checks also had to be proportionate to the specific circumstances. What constitutes proportionate checks depends on a number of factors including, but not limited to, the particular circumstances of the consumer (for example their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of the credit being considered. Even for the same customer, a proportionate check could be different for different applications.

In general, I think a reasonable and proportionate assessment should be more thorough:
- the lower the customer's income, reflecting that it could be more difficult to make repayments 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 credit, reflecting the fact that the total cost is likely to be greater and the customer is required to make payments for an extended period; and
- the greater the instances and frequency of credit, and the longer the period of time during which a customer has been given credit, reflecting the risk that repeated refinancing may signal borrowing has become unsustainable.

There may also be other factors that could influence how detailed a proportionate check should have been for a given application, including any indications of borrower vulnerability or foreseeable changes in future circumstances.

MBNA has described the information it gathered to assess whether Mrs F's credit was affordable before it was approved. This included:

- information contained in her application, including employment status and her income;
- information obtained from a credit reference agency (CRA), giving details of her existing and past credit arrangements; and
- an expenditure assessment using a combination of modelled data for key expenses, along with actual data from the CRA about the cost of her existing credit arrangements.

MBNA says it can't provide details of its calculations of Mrs F's expenditure due to the amount of time that's passed. Nonetheless, it maintains its affordability assessments were proportionate to the credit being given and demonstrated it was affordable.

Application and initial limit

As MBNA can't provide details of its expenditure calculation, I don't think I can reasonably conclude it's demonstrated that it carried out an appropriate affordability assessment. But even if this information were available, I've reviewed the other information it obtained and I think there were factors that should have prompted it to carry out further checks before approving Mrs F's credit. In this case, I don't agree an affordability assessment based mainly on modelled statistical data, rather than Mrs F's actual circumstances, was reasonable and proportionate. In my view, a combination of the following factors should have prompted further investigation:

- The proposed credit limit of £6,300 was high.
- In addition to a joint mortgage of approximately £270,000, the credit check showed Mrs F had existing personal debt of over £32,000, including over £14,000 of credit card debt. This was very high compared to her declared annual income of £42,000.

I believe this information suggests Mrs F was already heavily indebted and further checks were required to complete a proportionate affordability assessment.

I can't know exactly what further checks MBNA might have carried out at the time, but I think a consideration of Mrs F's actual income and expenditure would have been reasonable. So we've obtained copies of her credit report and bank statements for her main account covering the three months prior to her application to establish what information could reasonably have been discovered.

A review of the statements shows Mrs F's average income (including child benefit) was around £1,824 - considerably lower than declared in her application. I note MBNA's comments about relying on the information it was given, but I believe it would have discovered this figure wasn't correct if it had carried out appropriate checks.

From this amount, the statements show Mrs F paid an average of £350 to another account. The payment is entitled *'rent'* and she says this was her contribution towards the joint mortgage and other household bills, which I've no reason to doubt. Her credit report also shows she was required to pay a total of £340 on her existing loan arrangements. For the cost of her existing credit card commitments, our investigator calculated this to be £712 per month. This was based on monthly repayments equal to 5% of the total balance owed, which would allow that debt to repaid in a reasonable period of time and I think is a fair approach.

When the total of these outgoings is deducted from her average income, Mrs F was left with £422. MBNA offered further credit of £6,300 and needed to satisfy itself repayments would be sustainable if Mrs F borrowed the full amount. 5% of £6,300 is £315 per month, meaning Mrs F would have a disposable income of at most £107 per month after the new card was accounted for. And this doesn't take into account other costs, including insurances, communications and child-related costs shown on her bank statements.

When considering whether further credit was affordable, I think MBNA should have also taken into account that Mrs F was consistently overdrawn in the period before her application and on occasions exceeded her limit of £2,000. In my view, this is a sign of potential financial difficulty and that she wasn't in full control of her finances.

On balance, if MBNA had seen this information, it's my view that it should have concluded Mrs F couldn't afford further credit and declined to lend.

The credit limit increase in February 2020

Again, MBNA hasn't been able to provide evidence of its assessment of Mrs F's expenditure so I can't reasonably conclude it carried out a proportionate affordability assessment. But even if this information was available, I think further checks were warranted anyway in view of the amount of credit being considered and the fact that the credit check showed Mrs F's overall debt hadn't particularly decreased since her application.

In my view, Mrs F's credit report and bank statements for the period prior to this lending show her situation hadn't significantly improved. She was still living in her overdraft and exceeding the £2,000 limit in most months. And while her income appears to have increased by around £200 per month, this was matched by an increase in the amount she was contributing to the mortgage and household bills.

I've also considered Mrs F's use of the original limit on her MBNA card and the statements provided show that for the six months prior to the increase she was consistently using almost the entire limit and her monthly payments weren't significantly exceeding the minimum required. So she wasn't making any meaningful inroads into repaying her debt.

Again, if MBNA had taken all of this information into account, it's my view that it should have opted against increasing the limit on Mrs F's card.

In summary

If MBNA had adequately assessed whether the credit repayments were affordable and sustainable, it's my view it shouldn't have lent to Mr F. It's for this reason that that I'm upholding this complaint.

I've noted MBNA's comments about Mrs F's subsequent management of her credit card account, but I must assess its lending decisions based on the information available at the time.

Putting things right

The principal aim of any award I make must be to return Mrs F to the position she'd now be in but for the errors or inappropriate actions of MBNA. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think MBNA should have lent to Mrs F, I don't think it's fair for her to pay interest or charges on the amount borrowed. But she has had use of the money that was lent, so I think it's fair she repays the amount borrowed (without the addition of interest or charges).

To put things right, MBNA now needs to take the following steps:

- Rework the account to remove all interest, fees, charges and insurances (not already refunded) that have been applied since it was opened.

- If the reworking results in a credit balance, this should be paid to Mrs F with the addition of simple interest at 8% per year from the date of each overpayment to the date of settlement.

HM Revenue & Customs (HMRC) requires MBNA to deduct tax from any interest. It must provide Mrs F with a certificate showing how much tax has been deducted if she asks for one. If MBNA intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- Or, if after the reworking there's still an outstanding balance, MBNA should arrange an affordable payment plan with Mrs F for the shortfall.

- Remove any adverse information recorded on Mrs F's credit file relating to this credit, once any outstanding balance has been repaid.

If MBNA no longer owns the debt, it should liaise with whoever does to ensure any payments Mrs F has made since moving the account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

I'm satisfied this represents a fair and reasonable settlement to this complaint.

My final decision

For the reasons I've explained, I'm upholding Mrs F's complaint. Subject to her acceptance, MBNA Limited should now put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 3 July 2024.

James Biles
Ombudsman