

## **The complaint**

Mrs H is complaining about MBNA Limited because she says it lent irresponsibly in providing her with a credit card and credit limit increases she couldn't afford.

## **What happened**

In 1998, Mrs H was given a MBNA credit card. The credit limit was subsequently increased as follows:

- November 2003 - £5,300;
- May 2004 - £5,950;
- October 2004 - £7,950;
- February 2005 - £10,050; and
- August 2005 - £11,100

MBNA says Miss H began missing payments in 2006 and entered a debt management plan around the same time. The card was defaulted and the debt sold to a third party in 2007.

MBNA originally objected to us considering this case, saying Mrs H complained too late. One of my colleagues has already considered this point and issued a decision confirming we can investigate.

Our investigator concluded the complaint should be partially upheld. She felt the evidence showed the October 2004 limit increase was unaffordable and recommended redress based on a refund of interest and charges on balances above £7,950.

Mrs H questioned the proposed redress saying the refund of interest and charges should apply to balances over £5,950, which was the limit prior to the increase the investigator said shouldn't have been applied.

MBNA didn't accept the investigator's assessment. It believes the evidence relied upon is based on memory and approximations and the credit report provided doesn't include sufficient information about Mrs H's other commitments.

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, with a slight amendment to the required redress calculation. 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 lending to Mrs H, 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 H 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 H 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 MBNA.

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.

MBNA has described the information it would have gathered before approving Mrs H's original application and offering credit limit increases although says it can't provide this due to the time that's passed, which isn't necessarily unexpected. But, in the absence of this information, I can't reasonably conclude MBNA carried out proportionate affordability checks.

While the available information is limited, Mrs H has provided her recollection of her circumstances during the time she held the card. She's also provided extracts from a credit report dated October 2004. MBNA has also provided account statements from October 2003.

On balance, I don't think the information provided by Mrs H about her circumstances before the date of the credit report is sufficient for me to make a decision on whether the lending is affordable. But I think the credit report does show the information MBNA was likely to have seen when it was considering increasing the credit limit in October 2004 and I think it's reasonable to rely on this to assess whether it made a fair lending decision.

A review of the credit report shows Mrs H had multiple credit cards and mail order accounts with balances totalling in excess of £40,000. To be able to repay this debt in a reasonable period of time, our investigator estimated she'd need to pay 5% of the balance each month, which equates to around £2,000, and I think that's a reasonable approach.

Mrs H has also told us she'd entered full-time employment by 2004 and provided a copy of her employer's pay scale that indicates her annual gross salary was around £25,000. I've no reason to doubt this and I think it's information MBNA should have been able to obtain and take into account. I think this clearly shows that reasonable payments to her existing debt were already unsustainable.

In considering whether to increase the limit in 2004, I think it's reasonable to believe MBNA should also have taken account of how Mrs H had managed her card to that point. A review of the statements provided shows that in the months before the limit was increased she was using almost the full limit available to her and only making the minimum payment each month, meaning she wasn't making any meaningful progress towards repaying the debt.

Taking all of this information into account, it's my view that MBNA should have concluded it wasn't appropriate to increase the limit in October 2004 above the £5,950 already available.

With regard to the subsequent limit increases in 2005, I've seen nothing to indicate Mrs H's situation had improved and the card statements show she continued to borrow up to the increased limits and make payments near the minimum amount. I also note MBNA says she started to miss payments altogether in May 2006 before the account was defaulted shortly after. On balance, I think the evidence shows the credit limit shouldn't have been increased on these occasions either.

In summary, if MBNA had adequately assessed whether the repayments on the increased credit limits offered in October 2004 and in 2005 were affordable and sustainable, it's my view it shouldn't have lent further. It's for this reason that I'm partially upholding this complaint.

### **Putting things right**

The principal aim of any award I make must be to return Mrs H 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 further to Mrs H after the limit increase in May 2004, I don't think it's fair for her to pay interest or charges on the additional amounts borrowed. But she has had use of the money that was lent, so I think it's fair she repays the additional amounts 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 the limit increase in October 2004 on balances over £5,950.
- If the reworking results in a credit balance, this should be paid to Mrs H 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 H 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 in excess of £5,950, MBNA should arrange an affordable payment plan with Mrs H for the shortfall.
- Remove any adverse information recorded on Mrs H's credit file after October 2004 relating to this credit, once any outstanding balance over £5,950 has been repaid.

I understand MBNA no longer owns the debt and it should liaise with whoever does to ensure any payments Mrs H 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 H's complaint in part. 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 H to accept or reject my decision before 4 July 2024.

James Biles  
**Ombudsman**