

The complaint

Ms J complains that MBNA Limited (“MBNA”) acted in an irresponsible manner by opening her credit card accounts in April 2020 and April 2021.

What happened

I issued a provisional decision on this complaint last month. In that decision I explained why I only thought part of the complaint should be upheld. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

Ms J applied for, and was granted, credit cards by MBNA in April 2020 and April 2021. The first card (card 8390) was given a credit limit of £9,500 of which £6,835 was used to repay other credit card and catalogue shopping account balances. In April 2021 Ms J applied for, and was granted, an additional credit card (card 0798) with a credit limit of £6,300. Ms J used £4,645 of that limit to repay other credit card debt.

Ms J complained that the cards shouldn't have been given to her. She said that at the time of both applications she had significant other debt and was regularly using an overdraft to support her day to day living costs. She says that MBNA's checks were insufficient.

MBNA didn't agree with Ms J's complaint. It said its credit checks when the accounts were opened didn't indicate that Ms J would face any difficulties with repaying the lending. Unhappy with that response Ms J brought her complaint to us.

We've set out our approach to unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding Ms J's complaint.

The rules and regulations at the times MBNA gave the credit cards to Ms J required it to carry out reasonable and proportionate assessments of whether she could afford to repay what she owed in a sustainable manner. This assessment is sometimes referred to as an “affordability assessment” or “affordability check.”

The checks had to be “borrower” focused – so MBNA had to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for Ms J. In practice this meant that MBNA had to ensure that making the repayments wouldn't cause Ms J undue difficulty or adverse consequences. In other words, it wasn't enough for MBNA to simply think about the likelihood of it getting its money back, it had to consider the impact of any repayments on Ms J.

Checks also had to be “proportionate” to the specific circumstances of the credit card applications. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking.

In light of this, I think that a reasonable and proportionate check ought generally to have been more thorough:

- the lower a customer’s income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income);
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the longer the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should’ve been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I’ve kept all of this in mind when thinking about whether MBNA did what it needed to before agreeing to lend to Ms J.

MBNA says that it asked Ms J for information about her income, and what she was paying in housing costs. It says that it then used some national statistical data to estimate the remainder of her living expenses. And it checked Ms J’s credit file to assess how much she was repaying to other creditors, and how she had managed credit in the past.

At the time of her first application the information Ms J provided didn’t entirely match what MBNA saw from its credit check. She had told MBNA that she wanted to use the new credit card to repay some other credit card borrowing by balance transfer. But her application didn’t show any other outstanding debts. The credit check results that MBNA received did show other credit cards, and that they had outstanding balances. So on balance I think it would have been proportionate for MBNA to undertake some further verification of Ms J’s actual financial position.

But although I don’t think the checks MBNA did before offering the credit card were sufficient, that in itself doesn’t mean that Ms J’s complaint should succeed. I’d also need to be persuaded that what I consider to be proportionate checks would have shown MBNA that Ms J couldn’t sustainably afford the repayments she’d need to make. So I’ve looked at Ms J’s bank statements, and what she’s told us about her financial situation, to see what better checks would have shown MBNA.

At this stage I want to be clear that I am not suggesting that this is the exact check that MBNA should have carried out. I do think MBNA needed further evidence to corroborate what Ms J said was happening with her finances, and what it could see from its credit check. And looking at her bank statements is one way of achieving that although there are of course many other ways that level of detail could be established. But I think that by looking at Ms J’s bank statements I can get a good idea of what better checks might have shown.

I've carefully considered the information shown on Ms J's bank statements around the time that she applied for the first credit card. I can see that the income she declared was made up of earnings and dividends from the company of which she was the sole director. It seems that income fluctuated suggesting Ms J was, to a large extent, able to dictate her income to meet her expenditure. And supplementing Ms J's income were regular payments from family members that Ms J says were used to support her husband who was in full time further education.

I accept there is a risk that a downturn in Ms J's business would have a far greater impact on her finances than if she were employed in the normal sense by an unrelated company. But her bank statements, over a longer period, don't show any evidence that the company's finances were under pressure. So I don't think MBNA would have had any reason to expect a downturn in Ms J's income.

The regular expenditure shown on Ms J's bank statements is generally in line with what MBNA used in its affordability calculations. And it wouldn't have been unreasonable for the lender to conclude some of Ms J's other credit card repayments would reduce once she had used the new card to repay those outstanding balances. Whilst Ms J was using her overdraft from time to time her balance did also return to credit when she received income from her company. Overall Ms J's income and expenditure would suggest she had sufficient left over each month to meet the repayments on the credit card.

On balance I don't think the checks that MBNA did, or what I consider to be proportionate checks, gave any clear indication that Ms J would be unable to meet the repayments she'd be likely to need to make on her credit card. So I don't currently think MBNA was wrong to approve her application for this card.

Ms J applied for a second card around a year later. As I have said earlier, in response to our investigator's assessment, MBNA has accepted that it shouldn't have approved this application. And my analysis of the lending decision would also conclude that proportionate checks should have led to Ms J's second application being declined. So I will set out below the steps that MBNA needs to take in relation to this card.

I appreciate that my decision in relation to the first credit card will be disappointing for Ms J. But I'm not currently persuaded that what I consider to be proportionate checks would have led to MBNA reasonably declining that application.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. MBNA says that it doesn't have any additional comments to make. Ms J hasn't provided us with anything further.

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 I set out in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Ms J and by MBNA. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

Given that neither party has provided me with any new evidence or further comments I see no reason to alter the conclusions I reached in my provisional decision. So it follows that I'm not persuaded that what I consider to be proportionate checks would have led to MBNA reasonably declining Ms J's first application. But, as it has already accepted, MBNA shouldn't have provided the second card to Ms J. So it needs to put things right.

Putting things right

I don't think it was responsible for MBNA to give the second credit card to Ms J (card ending in 0798). So, MBNA needs to put things right. As Ms J has had the benefit of the spending she made with that card, I think it right that any spending should be paid back in full. And I also note that MBNA has now sold the debt on this card to a third party. So MBNA should either take the debt back into its own name, or arrange with the third party for the following steps to be taken. MBNA should;

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to the card over its lifetime.
- If the rework results in a credit balance, this should be refunded to Ms J 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 recorded regarding this account from Ms J's credit file.
- Or, if after the rework an outstanding balance remains, MBNA should arrange an affordable repayment plan (or direct the third party to arrange an affordable plan) with Ms J for the remaining balance. Once Ms J has cleared the outstanding balance, any adverse information recorded in relation to the account should be removed from her credit file.

*HM Revenue & Customs requires MBNA to deduct tax from any award of interest. It must give Ms J 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.

My final decision

My final decision is that I uphold a part of Ms J's complaint and direct MBNA Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 17 July 2024.

Paul Reilly
Ombudsman