

The complaint

Mr M complains that MBNA Limited lent to him in an irresponsible manner.

What happened

Mr M has held two credit cards with MBNA. The first card (account number ending 0765) was opened in November 2018 with an initial credit limit of £5,600. The credit limit was increased to £6,500 in January 2020 before the account was closed in May 2020. The second card (account number ending 5476) was opened in September 2020 with an initial credit limit of £10,000. The credit limit was increased to £13,500 in March 2022 and a balance remained outstanding on this card when Mr M made his complaint.

MBNA told Mr M that it didn't think it had been wrong to give him either card, or to make the increases to their credit limits. It said it had conducted appropriate checks before each lending decision, and they showed that Mr M would be able to afford what he owed. Unhappy with that response Mr M brought his complaint to us.

Mr M's complaint has been assessed by one of our investigators. She didn't think the checks MBNA had done before opening either credit card account were sufficient. And she thought better checks would have made MBNA aware that Mr M was facing problems managing his spending on gambling transactions. So she didn't think either credit card (or the limit increases) should have been given to Mr M and asked MBNA to put things right.

MBNA accepted that it shouldn't have given the second credit card to Mr M. But it still thought it had been reasonable to give Mr M the first card, and the credit limit increase on that card. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr M accepts my decision it is legally binding on both parties.

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.

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

The rules and regulations at the time MBNA gave these credit cards (and limit increases) to Mr M 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 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 Mr M. In practice this meant that MBNA had to ensure that making the repayments wouldn’t cause Mr M 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 Mr M.

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 Mr M.

MBNA gathered some information from Mr M before it offered him the first credit card. It asked him for details of his income, and his normal housing costs. It then used some industry statistical data to estimate the remainder of Mr M’s expenditure. And it checked his credit file although the results MBNA have given to us from the time of the first application only relate to the lack of any adverse information rather than Mr M’s current use of credit at that time.

Mr M was entering into a significant commitment with MBNA. If he used his full credit limit he might need to make repayments of almost £300. I am not satisfied that the credit check results MBNA has provided to us are sufficient for it to form a good view of his financial circumstances. Mr M’s credit file from that time would have shown that he was already repaying three separate personal loans, the most recent of which was taken only eight months before. In total he was repaying over £500 per month on those loans. I think that his heavy reliance on credit should have caused some concerns to MBNA.

So I would expect that MBNA would want to gather, and independently check, some detailed information about Mr M’s financial circumstances before it agreed to lend to him. I don’t think that the checks it did were enough. I think it would have been proportionate for MBNA to independently check the true state of Mr M’s finances before approving the credit card application.

But although I don't think the checks MBNA did before agreeing the application were sufficient, that in itself doesn't mean that Mr M's complaint should succeed. I'd also need to be persuaded that what I consider to be proportionate checks would have shown MBNA that Mr M couldn't sustainably afford the repayments. So I've looked at Mr M's bank statements, and what he's told us about his 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 evidence to corroborate what Mr M said was happening with his finances. And looking at his 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 Mr M's bank statements I can get a good idea of what better checks might have shown.

It is clear that Mr M's finances were under pressure when he applied for this credit card. He was regularly spending large, and increasing, amounts each month on what he has told us was a gambling addiction. I think, better checks would have shown MBNA the extent of those problems, and as a responsible lender it would have declined Mr M's application for the first credit card.

As I don't think the credit card should have been approved in the first place it follows that I don't need to consider whether the credit limit increase in January 2020 was reasonable. But for completeness I will note that in the months leading up to the limit increase Mr M's spending on his credit card was almost exclusively money transfers and gambling transactions. Again those would have shown MBNA the nature of Mr M's problems.

MBNA has now accepted that it should have declined Mr M's second credit card application. He applied for that card around four months after the first card had been closed. So MBNA would have still had the information I've mentioned above about how Mr M had used his previous card, and the underlying problems that usage showed. So I agree that the second card shouldn't have been provided either.

For completeness I've also considered whether MBNA acted unfairly or unreasonably in some other way given what Mr M has complained about, including whether its relationship with him might have been viewed as unfair by a court under s.140A of the Consumer Credit Act 1974. But, I'm satisfied the redress I am directing here results in fair compensation for Mr M in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

I don't think it was responsible for MBNA to give the either credit card to Mr M. So, MBNA needs to put things right. As Mr M has had the benefit of the spending he made with the cards, I think it right that any spending should be paid back in full. So to put things right. MBNA should;

- Rework each 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 on either account, this should be refunded to Mr M along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. MBNA should also remove any adverse information recorded regarding the account from Mr M's credit file.
- Or, if after the rework an outstanding balance remains on the second card, MBNA should arrange an affordable repayment plan with Mr M for the remaining balance.

Once Mr M has cleared the outstanding balance, any adverse information recorded in relation to that account should be removed from his credit file.

- It is reasonable for MBNA to use any compensation due from the first credit card to repay any outstanding balance remaining on the second card subject to the caveat below.

*HM Revenue & Customs requires MBNA to deduct tax from any award of interest. It must give Mr M a certificate showing how much tax has been taken off if he asks for one. If MBNA intends to apply the refund from the first card to reduce an outstanding balance on the second card, it must only do so after deducting the tax.

My final decision

My final decision is that I uphold Mr M'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 Mr M to accept or reject my decision before 15 October 2024.

Paul Reilly
Ombudsman