

The complaint

Mr H complains that MBNA Limited was irresponsible when it offered him a credit card account.

What happened

MBNA opened a credit card account for Mr H in August 2020 with a credit limit of £8,000. I understand the facility was withdrawn in March 2024.

Mr H complained to MBNA earlier this year that it had been irresponsible to provide him with credit. He said that MBNA wouldn't have issued him with a credit card with an £8,000 limit had it carried out proportionate checks as his bank statements showed unsustainable gambling funded by credit, and his credit file showed a high turnover of accounts and historic negative markers.

Mr H also complained that MBNA should not have approved his money transfers to a digital wallet. These amounted to thousands of pounds, sometimes with multiple transfers on the same day, and enabled him to spend his credit card funds on gambling. In addition, Mr H said that he applied a gambling block to his account, and started the debt support process using the bank's software application, but MBNA didn't take action or freeze his spending until he made his complaint.

MBNA said in response that Mr H passed all its checks; the credit it offered was affordable for him given the information he'd provided in his application, and it hadn't made a mistake in offering him the card. MBNA also said that Mr H hadn't been in touch to ask for support with his gambling and so it wouldn't have known that it had become an addiction. Likewise, it didn't restrict his transfers to his external account because it was unaware of the purpose of these transactions. MBNA didn't uphold Mr H's complaint and he referred it to us.

Our investigator looked into Mr H's complaint but didn't recommend that it be upheld. They found that although MBNA ought to have carried out more rigorous checks when Mr H applied for an account, such checks would likely have shown the credit to be affordable for him and wouldn't have raised concerns about financial difficulty.

Mr H didn't agree with this recommendation and asked for the complaint to come to an ombudsman to decide. I reviewed the complaint and came to a different conclusion to our investigator. I sent out a provisional decision on 26 September 2024 to explain why and to share the information I'd relied on with both parties.

Mr H agreed with my provisional decision but MBNA did not.

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 reviewed everything again, including what MBNA said in response to my provisional decision, I remain of the view that Mr H's complaint should succeed. I'll set out my reasons for upholding his complaint again in this final decision, and refer to MBNA's responses where appropriate.

As before, I've had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as MBNA, need to abide by. MBNA will be aware of these, and our approach to this type of lending is set out on our website, so I won't refer to the regulations in detail here but will summarise them.

Before entering into a credit agreement or significantly increasing a credit limit, MBNA needed to check that Mr H could afford to repay the credit out of his usual means, within a reasonable period of time, without having to borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to be proportionate to the nature of the credit, for example the amount offered, and to Mr H's particular circumstances. MBNA needed to bear in mind that certain factors might point towards a more rigorous assessment, for example in the case of more expensive credit or credit that was higher in amount, and it needed to have proper regard to the outcome of its assessment in respect of affordability risk.

The overarching requirement was that MBNA needed to pay due regard to Mr H's interests and treat him fairly. CONC 2.2.2G gave an example of contravening this as 'targeting customers with regulated credit agreements which are unsuitable for them by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.'

With this in mind, my considerations are did MBNA complete reasonable and proportionate checks when it opened the account for Mr H to satisfy itself that he would be able to repay the credit offered within a reasonable period of time? If it didn't do this, what would reasonable and proportionate checks have shown? Was there anything of concern in the checks MBNA did carry out and did it make fair lending decision? Did MBNA treat Mr H unfairly or unreasonably in any other way, including whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974?

I said the following in my provisional decision:

"MBNA said in its final response letter to Mr H that when making its lending decision it relied on information he'd provided about his income and rent payments; information it held and information from his credit file to estimate his monthly minimum repayments on debt, and information from the Office of National Statistics to estimate his other monthly expenses.

Mr H told MBNA in his application that he was employed with a salary of £65,950 (or around £3,900 net a month) and that he paid rent of £1,900 a month. MBNA hasn't provided a copy of the credit file information it acquired nor has it provided estimates of Mr H's expenses.

Mr H provided a recent copy of his credit file which contains information about the debts he had at the time, some of which were reported by the credit reference agency MBNA said it used. I think it's reasonable to assume MBNA saw this information at least, as it explained to us that its lending policy rules took employment and good credit history into account.

Mr H had a history of borrowing from short term lenders over the years, and had opened and closed a £3,000 short term loan in June 2020 and another in August. He had two active loans taken out in the previous 12 months with repayments of £116 and £118 and held two credit cards, one of which had been opened in May. Mr H also held three current accounts, one of which had been in arrears throughout 2020 apart from the months of July and August.

As mentioned, I don't know what MBNA estimated as Mr H's expenses but I think the credit file information showing recent arrears and recent borrowing should have raised concerns that he might be experiencing financial difficulty. Given this, and the amount of credit it was offering, I think it would have been proportionate of MBNA to have carried out a more rigorous assessment in order to reasonably check whether Mr H would be able to repay the credit borrowed without having to borrow further or without experiencing adverse consequences."

In response to my provisional decision, MBNA asked for a copy of Mr H's credit file and the bank statements I'd relied on and we provided redacted copies of these. MBNA said that the current account information I'd referred to showed an account in an arrangement to pay which might not necessarily mean that the account was in arrears. It also said that this information was not reported by the credit reference agency it used in its assessment.

I reviewed Mr H's credit file again in the light of these comments, and I accept that MBNA might not have seen the arrangement to pay marker on one of Mr H's current accounts as it wasn't reported by the credit reference agency MBNA said that it used. However, this agency did report several short term loans within the previous 12 months, and that Mr H had missed payments on three of them. I'd also said in my provisional decision that MBNA's checks weren't proportionate because of the amount of credit it was offering to Mr H, and I remain of the view that it didn't carry out proportionate checks on this occasion.

I went on to say the following in my provisional decision:

"Mr H provided bank statements for the current account his wages were paid into for the period 17 June to 17 September 2020. To be clear, I'm not suggesting that this is the information MBNA should have reviewed in its assessment but it is the information that I have, and I think it's reasonable for me to rely on this to consider what a proportionate check would likely have revealed about Mr H's financial circumstances.

The statements show that Mr H received wages of around £3,775 each month and made various payments to a property management company, the highest being £2,188. He made regular payments covering council tax, utilities, insurances, media and health amounting to about £325 a month. There are no identifiable food or travel costs.

The statements also show that in addition to the lending mentioned above, Mr H was making payments of £138 on a third loan and had recently borrowed from two other short term lenders when he ran out of funds in his account. There were a high number of transfers in and out of the account amounting to about £42,000 each way in this two month period, including transfers to Mr H's other current account and his two credit card accounts. It seems to me that Mr H was reliant on expensive credit to cover a significant level of spending and, as mentioned, had incurred recent adverse markers on his credit file.

Altogether, I think a reasonable and proportionate check would have reassured MBNA that the income and rental figures Mr H had given were broadly reflective of his circumstances. However, I don't think MBNA would have been reassured that Mr H would have been able to repay the credit offered without experiencing adverse consequences, such as borrowing from elsewhere to meet his repayments or failing to meet them, given how he was managing his finances.

Mr H shared with us that he had a long-term gambling addiction funded by high-cost borrowing. Mr H's bank statements for his other current account and his digital wallet show that he was spending well beyond his means to gamble. I don't think MBNA would necessarily have found this out through a proportionate check – there aren't any identifiable

gambling transactions on the account Mr H used for his wages and bills. However, I think it's likely it would, or should, have seen that Mr H had a pattern of spending that was causing him financial harm, and that it wouldn't be treating him fairly and with regard to his interests by providing him with more credit as it was likely this pattern would continue.

I can see from the credit card account statements that Mr H used his credit immediately making transfers to credit cards and a £4,000 transfer to his current account, which was transferred on and ultimately spent on gambling.

I've concluded that Mr H would not have been offered the account but for MBNA's shortcomings in its assessment. I've found MBNA was irresponsible to have entered into the agreement with Mr H and so needs to put things right for him.

I've also considered whether MBNA treated Mr H unfairly or unreasonably in any other way, including whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. Altogether, I'm satisfied the redress I have directed below results in fair compensation for Mr H in the circumstances of his complaint and that no additional award would be appropriate in this case.

Mr H said in his complaint that MBNA should not have allowed him to transfer money to his digital wallet because this enabled him to use the credit for gambling. MBNA said in response that it didn't know the purpose of these transactions and so it didn't restrict them. As MBNA will know, it has an obligation to monitor a credit card customer's repayment record and any other relevant information it holds and to take appropriate action where there are signs of actual or possible financial difficulties. An example of such a sign might be a significant change in how Mr H was using the card.

I haven't investigated this point further or made a finding as to whether or not MBNA got anything wrong after the account was opened. I've concluded it was irresponsible to have entered into the agreement in the first instance and plan to uphold Mr H complaint on this basis. Any proposal for putting things right for him on this particular point would likely be encompassed in the redress I've set out below.

Mr H also said that he tried using card freezes to stop MBNA being part of the debt cycle. He said that he applied the gambling block and started the debt support process using the bank's software application but it didn't block his account from further spending until he raised his complaint.

I asked MBNA about this and it confirmed that it applied a block in March 2024 when Mr H raised his complaint and when he first made it aware of his gambling. MBNA said it found no evidence prior to this to suggest that Mr H contacted it to add a block or to advise it of his gambling. MBNA said it had applied a fraud block to a transaction in December 2021 but this was removed when Mr H confirmed the payment was genuine.

I've reviewed the customer contact notes MBNA provided and haven't seen any mention of a block, apart from the fraud block in December 2021. It may be that Mr H didn't complete the process he mentioned and so no contact regarding blocks was captured. I haven't investigated this point further because I am upholding Mr H's complaint for other reasons, as I've explained."

In response to my provisional decision, MBNA asked to see copies of bank statements for Mr H's other current account and his digital wallet. We didn't send copies of these to MBNA because I hadn't relied on them to make my decision. They simply supported what Mr H had told us about where his money was going and, as I'd said, MBNA wasn't likely to have uncovered this through a proportionate check.

I relied on the bank statements for the current account Mr H's wages were paid into, which we did provide to MBNA. As I said in my provisional decision, it was clear from these account statements that Mr H was reliant on expensive credit and was spending a significant amount of money. I concluded that MBNA would not have been reassured that Mr H would have been able to repay the credit offered without experiencing adverse consequences, given this existing pattern of spending.

I remain of the view that Mr H would not have been offered the account but for MBNA's shortcomings in its assessment. I've concluded that MBNA was irresponsible to have entered into the agreement with Mr H and needs to put things right for him.

Putting things right

As per our usual approach in cases where we've found that credit had been irresponsibly given, I think it's fair that Mr H repays the money he's spent but I don't think it's fair that he pays any interest, fees or charges associated with the account or has his credit file adversely impacted. Therefore, MBNA should:

- Rework the account removing all interest, fees, charges or insurance premiums (that haven't already been repaid) that have been applied from the beginning;
- If the rework results in a credit balance, this should be refunded to Mr H 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 regarding this account from Mr H's credit file.
- Or, if after the rework, there is still an outstanding capital balance, MBNA should arrange an affordable repayment plan with Mr H for the remaining amount. Once Mr H has cleared the balance, any adverse information in relation to the account should be removed from his credit file.

*HM Revenue & Customs requires MBNA to deduct tax from any award of interest. It must give Mr H a certificate showing how much tax has been taken off if he asks for one.

My final decision

For the reasons I've explained above, I am upholding Mr H's complaint about MBNA Limited and it now needs to put things right for him as I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 December 2024.

Michelle Boundy
Ombudsman