

The complaint

Mr T complains that MBNA Limited (MBNA) lent to him irresponsibly.

What happened

Mr T is represented by his daughter but I refer to Mr T as the complainant here.

Mr T has had a credit card from MBNA since 1999. From that time, he had a limit of £12,000. This was increased in December 2012 to £17,200.

Mr T carried out a series of balance transfers:

October 2016: £750 – interest free until December 2017.

June 2017: £1,500 – interest 4.95% p.a. until June 2022.

June 2019: £6,000 – interest 3.95% p.a. until May 2022.

Mr T is now elderly (aged 89) and his monthly income has reduced to around £1,100 – he was previously on an annual salary of £37,000 and this reduced when he retired in 2005.

Mr T had a series of interest free (or low interest) balance transfers but as these have ended, he is having to pay monthly interest. The balance is now £1,164 (August 2024). Interest is approximately £30 per month.

He has told MBNA he is in financial difficulty and asks that he is given a zero-interest rate because of that. He says the interest is too high for him to pay on a limited income, taking into account his other living expenses.

Mr T says MBNA couldn't have carried out the necessary credit checks when he took the card, or for the subsequent limit increase. His monthly income was only £1,100 and the limit of £17,200 wasn't affordable. He also says MBNA haven't treated him fairly when he told the firm he was in financial difficulty.

In July 2022, MBNA said the increase in limit in 2012 was out of scope because it took place more than six years before Mr T complained. The bank said they could offer short term support for customers in temporary difficulty – these would last for 2 – 12 months. But if a customer was going to be in difficulty for longer than that, they said the only way to give Mr T interest free borrowing was to default his account – which would mean a marker being added to his credit file.

In their final response, MBNA refunded six months' interest and gave Mr T a further three months interest waiver to enable him to review his options.

Mr T didn't want to have a default marker on his credit file – he said that would be a backward step given his age, and he needed to have credit limits for certain essential things – such as utility bills for example. He brought his complaint to us.

Our investigator issued a view which said Mr T had brought his complaint to MBNA within three years of becoming aware that he had reason to complain. This was said to be in January 2020 when he was having difficulty with another financial product. This was confirmed in a final decision issued by our service in December 2023.

Our investigator then looked into the merits of Mr T's complaints and said:

- Irresponsible lending: he looked at some of Mr T's bank statements covering the periods between 2010 and 2016. But he said MBNA's records didn't cover the periods in question, and based on that, he couldn't reasonably say whether the lending was irresponsible or not.
- Financial difficulty: he said the bank statements showed Mr T was permanently in overdraft (approx. £2,500), and his income was about £1,100 per month. When Mr T called MBNA in 2020, an income and expenditure assessment was carried out which showed he was then in long term financial hardship. And so – he said MBNA should then have taken steps to help him then.
- On the call in January 2020, MBNA said his only viable route was to go into default and sell the debt to a debt collection agency. The bank at that time put a 30 day hold on the account to allow Mr T to get some financial advice.

Our investigator said MBNA should refund all interest and charges from June 2017. And if that resulted in a credit balance, then 8% per annum interest should also be added.

MBNA didn't agree. The firm said that they monitored accounts, but they would only be concerned if there were adverse trends showing on the MBNA account, for example if there were missed payments or defaults showing on a customer's credit file. Just because someone was using their bank overdraft wasn't a reason to reduce a credit limit.

The firm said they'd identified Mr T was in long term financial hardship in 2020 and offered him a solution but he didn't want that – and continued to paying the monthly payments to the card – and he didn't want a default recorded against him.

MBNA asked that an ombudsman look at the complaint, and so it has come to me.
(continued)

I made a provisional decision which did not uphold the complaint:

This is a long outstanding complaint, with a lot of correspondence - and I've summarised what I think are the key points to keep things relatively simple to reach a fair and reasonable decision here.

Financial Difficulty:

Mr T was assessed as being in financial difficulty in January 2020 when his daughter called MBNA. I listened to the calls.

Miss T (for her father) carried out an income and expenditure assessment. It showed that based on that, he didn't have enough income to meet his living costs and borrowing commitments with MBNA and two other providers. So, in short, he was deemed to be in long term financial difficulty – as (understandably) there wasn't any prospect of him getting work and increasing his income.

But here, just because Mr T was in financial difficulty doesn't mean to say that MBNA had to give him a long-term interest free deal.

The Financial Conduct Authority (FCA) says: businesses have an obligation to treat customers in financial difficulty sympathetically and businesses like MBNA should treat customers in difficulties with forbearance and due consideration. For example, a business might suspend or waive interest, accept lower payments or defer them, and allow customers more time to repay their debt.

The FCA's guidance doesn't say that MBNA had to give Mr T a interest free account for an indefinite time.

And what most banks (including MBNA) do is that they will give customers in *temporary* difficulty a series of interest free period with no repayments needed – but these are only put in place for a limited number of times, say for a period of three or six months or up to a year in some circumstances. Typically, these are for customers who are (say) out of work and aim to return to work in a short period of time.

If a customer is deemed to be in long term difficulty, then after some period of temporary arrangements, for a long term zero-interest arrangement to be agreed, the account has to be allowed to default (i.e. no payments made) and the account is normally passed to a debt collection agency (DCA) to manage.

That's what MBNA's final response says, and what was described to Mr T on the phone in January 2020. That's normal industry practice and is MBNA's practice - and I can't make the bank do anything different. I noted that Mr T didn't want to go down that road, as he didn't want a default on his record, and it would make it difficult for him to get other credit.

Put simply, I can't make MBNA give Mr T an interest free account without a default being registered – and I'm satisfied that MBNA have followed the FCA's guidance here.

So – I don't uphold Mr T's complaint on that aspect or ask MBNA to refund interest and fees.

I don't agree with what our investigator has said here – as what he said doesn't follow the guidance that the FCA has laid down.

Irresponsible lending:

I went on to consider whether MBNA lent to Mr T responsibly – i.e. should he have been allowed to originally borrow the money based on the assessments MBNA carried out.

All lenders have an obligation to lend money responsibly. We must check whether MBNA acted in line within the Financial Conduct Authority (FCA) rules on creditworthiness

assessment as set out in its handbook, (CONC) section 5.2. These say that a firm must undertake a reasonable assessment of creditworthiness, considering both the risk to it of the customer not making the repayments, as well as the risk to the customer of not being able to make repayments. We look at:

- Whether the lender completed reasonable and proportionate checks to satisfy itself that the borrower would be able to repay any credit in a sustainable way?
- If reasonable and proportionate checks were completed, did the lender make a fair lending decision bearing in mind the information gathered and what the lender knew about the borrower's circumstances?
- And a reasonable and proportionate check would usually need to be *more* thorough:
 - the lower a customer's income, and the higher amount to be repaid.
 - the greater the number of loans and frequency of loans.
 - the longer the term of the loans

MBNA say they have no records as far back as 2012 and can't evidence any assessments done then – when the limit was increased to £17,200. I think that's reasonable of MBNA to say – we can't expect firms to maintain records for so long. So quite simply, based on this, I cannot make an informed decision about whether the lending was irresponsible or not.

I can see that Mr T was using his bank overdraft at the time – but as MBNA have said, that's not necessarily a reason to consider he wasn't able to manage his credit card borrowing, or to come to a decision that the limit should be reduced. We only expect a firm to look at a customer's bank statements if there is a reason to make further inquiries i.e. if the MBNA account was showing signs of difficulty.

I looked at Mr T's MBNA monthly statements from July 2016 to the present time – and he met every monthly payment during that time, and usually made payments of twice (or more) the minimum amount needed. His balance reduced from £4,504 in July 2016 to £1,164 now. So – this suggests he could manage the debt.

If MBNA's lending had been provided irresponsibly, it would be reasonable to assume he might have missed payments or made less than the minimum payment due – but this wasn't the case. So, on balance, (and noting also the lack of evidence) I can't say that MBNA's lending was provided irresponsibly.

I asked MBNA for the assessments they carried out for the balance transfers. MBNA said that unless there's a reason not to agree the balance transfer (for example, if the monthly payments weren't being made), and if the account is being well managed, they don't undertake an assessment of each balance transfer. And as I've said, there's no indication the account wasn't being managed well – as Mr T was making the monthly payments over a long period of time.

I accept that Mr T (and his daughter) will be disappointed by my provisional decision as they've argued strongly in support of this complaint. But I want to assure Mr T that I've investigated this case in detail and I'm satisfied that this provisional decision is a fair and reasonable one in the circumstances of everything I've seen.

Responses to the provisional decision:

MBNA had no more comments. Mr T's daughter made some further comments which said (in summary):

- The fact that MBNA couldn't show what checks were carried out in 2017 should not form the basis of the decision.
- MBNA knew that Mr T was paying his credit card by using other credit (i.e. his overdraft) and this was a red flag which should've led to forbearance and/or referral to debt advice agencies. It also meant he was in financial difficulty.
- The fact that Mr T was vulnerable wasn't identified by MBNA staff as it should have.
- she said she wanted it noted that MBNA sent to Mr T the wrong information under a Data Subject Access Request (DSAR) – she says he was sent information about another customer. She said this was evidence of MBNA's poor record keeping.

I now need to consider these views and make a final decision.

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.

At the outset, in considering this complaint, I'd like to say that we are not a consumer group – we are an informal complaint resolution service. We are not a consumer group acting for (in this case) Mr T. We are independent and impartial and our role is to listen to both sides of a complaint, take evidence from both parties, and then decide on a fair and reasonable outcome. It's important to bear this in mind here because that's what I've done.

I have reviewed Mr T's complaint again and in the light of the comments his daughter has made, but I'm satisfied the provisional decision I reached was a fair and reasonable one, taking into account all the available evidence.

On Mr T's further points:

As I said in the provisional decision, MBNA's records don't go back as far as 2012 (not 2017 as Mr T states) – when the limit was increased to £17,200. And I said I couldn't make a decision on whether the lending was at that time provided irresponsibly. That remains the case.

I don't think that, of itself, if a customer is paying a credit card with an overdraft necessarily means he /she is in financial difficulty. But when MBNA spoke to Mr T in 2020, they did identify him as having more outgoings than income and offered him solutions – which he didn't want to take up. The provisional decision outlined what those were, and they were what we would expect MBNA (and other firms) to offer and were in line with FCA guidance.

I agree that given his age and financial situation, Mr T was probably vulnerable. And in those circumstances, firms are required to be sympathetic and act accordingly. But – in all honesty, I don't think that means MBNA had to give Mr T interest free borrowing on the terms he wanted.

I noted the comments about the DSAR – but this wasn't part of the complaint brought to us by Mr T and hasn't been looked into by us – so I make no comment on that. If Mr T wants to complain about this, he should firstly contact MBNA.

I accept this isn't the decision that Mr T was hoping for and I'm sorry to disappoint him. But I am not asking MBNA to do anything here.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 18 November 2024.

Martin Lord
Ombudsman