

The complaint

Mr H complains that MBNA Limited lent to him irresponsibly in relation to a loan he says was approved for him. Mr H estimates that the loan was approved on a date between 1998 and 1 January 2001.

What happened

On 11 August 2023 Mr H complained to MBNA about a loan. He was able to produce some brief details of an MBNA loan on a Debt Management Plan document (DMP) created by a debt charity which has been administering the DMP for multiple debts and accounts for Mr H since January 2006. He thinks the loan was approved in 1998 but it may have been 2000 or 2001.

MBNA issued a final response letter to Mr H after he had referred his complaint to the Financial Ombudsman Service. It said that it had no records of any loans with Mr H. It said that if Mr H did have a loan, the reason it had no records may well have been because the loan may have closed more than six years ago, and if that was the case then its view was that the complaint had been brought out of time. Further, it did not give consent to the Financial Ombudsman Service looking into it.

After Mr H had referred the complaint to us, one of our investigators considered the element surrounding the timeliness of Mr H bringing the complaint, and she also considered the merits of the complaint. She thought that the Financial Ombudsman could look at it, but having considered the merits she did not uphold the complaint.

There was no evidence or details of any kind about the loan from MBNA, or the checks MBNA may have carried out or did carry out before approving the loan. Mr H was not able to produce much evidence of his financial situation from 1998 to 2001 which he thinks was the time period during which the loan was approved for him. So, our investigator's view was that she did not have enough information to say whether MBNA had carried out sufficient checks, nor what those checks would likely have shown.

Our investigator considered whether MBNA acted unfairly or unreasonably in some other way including whether its relationship with Mr H might have been viewed as unfair by a court under s.140A Consumer Credit Act 1974. But she did not think this was likely to have been the case.

Mr H disagreed and asked for an ombudsman to review it.

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 general approach to complaints about unaffordable/irresponsible lending - including all of the relevant rules, guidance, and good industry practice - on our website. And I've used this approach to help me decide Mr H's complaint.

If the loan was approved for Mr H in or around 1998 then the Office of Fair Trading (OFT) was the regulator. The Consumer Credit Act 1974 set out the factors the OFT needed to consider when looking at how businesses lent to its customers, and it stipulated that the lender needed to assess the consumer's creditworthiness using both information supplied by the applicant as well, if needed, data obtained from a credit reference agency.

I have looked at the information we have relating to this loan which is virtually nothing. I have considered whether it was a practical approach to review the jurisdiction element of this complaint as I have my doubts as to whether this complaint does fall within our jurisdiction. However, MBNA has not responded to the jurisdiction part of our investigator's view, so I have assumed that it has nothing further to say on that point. And as the complaint has proceeded to this stage of the resolution process within the Ombudsman Service then it seemed fair and reasonable to reach a conclusion by issuing a decision.

As for the loan itself, I do not have definitive information as to when the loan was approved, the amount, the repayments, or the term length. Mr H has given us what he thinks it was but that is not enough.

Assuming that a loan was approved by MBNA, I have no information from it as to the loan's status, if it was defaulted, if it was sold to a third party or what happened to it as it has no records at all. Mr H says that it became part of his DMP but we've nothing concrete to determine that, other than one line in a DMP summary document citing an agreement number and a debt collector's reference. But there's nothing which correlates with MBNA's records as it has none.

If I was to proceed on the basis that a loan was approved at some point between 1998 and 2001 to Mr H by MBNA, I have no details from either party to determine the method of the loan approval or what Mr H's financial situation was at the time.

Mr H has sent us a document to show that he had joined a pension scheme on 1 October 2000. That shows he was employed then and was part of a pension scheme, but it shows us no more than that. Mr H says in his letter of complaint that by the end of 2005 he had eleven creditors and about £60,000 of debt excluding a mortgage. He says he was using more and more credit to pay bills. I am sorry to read of this, but Mr H has not been able to provide any evidence to demonstrate the income or his outgoings. Mr H has approximated his income and expenditure for three different periods – 1997 to 1999, 2000 to 2003 and 2004 to 2005. He created a table and sent it to us. He told us:

'The table ... provides historical information relating to monthly income and expenditure during the period of borrowing up until the point of taking out the Debt Management Plan (DMP) in early 2006. The data is estimated (based on memory) but provides a representation of the circumstances at the time.'

This is insufficient.

I don't have any information to indicate what MBNA's checks were likely to have shown, or whether its checks were sufficient. It is not unreasonable that MBNA no longer has this information, given that Mr H says the lending was about 25 years ago. MBNA cannot reasonably be expected to keep records indefinitely.

From Mr H, we don't have any confirmed or authenticated evidence for the time when he tells us the loan was approved. And even if he had sent us this – I would still need to see what, for it's part, MBNA did in or around 1998 or 2000 or 2001 to come to a balanced and

reasonable decision about whether Mr H could afford to repay the loan. And as that isn't possible, I'm unable to say that MBNA lent irresponsibly at that time.

I've also considered whether MBNA acted unfairly or unreasonably in any other way, and I have considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. We have no information about that relationship, but I have considered it.

For the reasons I've already given, I don't think it lent irresponsibly to Mr H or otherwise treated him unfairly in relation to this matter. So, I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

My final decision

Following on from the reasons given above, my decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 4 March 2025.

Rachael Williams
Ombudsman