

The complaint

Mr C has complained that MBNA Limited acted irresponsibly when it provided him with a credit card in March 2016.

Background

Mr C applied for a credit card with MBNA in March 2016. His application was approved, and he was provided with a card that had an opening limit of £1,100. Mr C has said that at the time he was already struggling to manage his existing credit commitments and had a compulsive gambling problem which made him financially vulnerable. He has said the card was used almost exclusively to support his gambling addiction and that the decision to provide the credit facility to him resulted in financial harm and had serious negative consequences for him. He's asked that MBNA refund all the interest and charges applied to the account as well as 8% simple interest on that amount.

MBNA initially responded to Mr C's complaint raising jurisdiction concerns as he complained more than six years after the account was opened. However, in its submissions to this service it also defended the lending decision saying at the time there was nothing to indicate the card wouldn't be affordable for Mr C. It also noted that once it became aware Mr C was using the card to gamble it withdrew the facility and closed the account once the balance had been repaid. So, it didn't think it had done anything wrong in regard to the lending decision or how it supported Mr C once it was aware of his vulnerabilities.

Mr C disagreed with MBNA's jurisdiction objections and brought the complaint to our service. One of our investigators found the complaint was in jurisdiction and one we could consider for Mr C. Having done that the investigator found that at the time of application the checks MBNA did were sufficient and that there was nothing in those checks to indicate the card would be unaffordable for Mr C, so he didn't uphold the complaint. MBNA accepted the investigator's findings but Mr C didn't and asked for an ombudsman to review the complaint again and so it's been passed to me for consideration.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In his view our investigator set out the reasons why he thought this service had jurisdiction to consider Mr C's complaint. In his response to the view Mr C disagreed with the rationale applied and explained he thought our jurisdiction arose for different reasons. I agree that this case is one that we can consider and note there was no objection from MBNA on the approach adopted by the investigator. As all parties now agree the case is one we can consider at merits, this decision will focus on the crux of Mr C's complaint, i.e., whether or not he was lent to irresponsibly and will not address the jurisdiction objection as this is no longer being raised by the business.

Mr C has said that at the time he applied for the credit card he was gambling in a compulsive and harmful way. As a result of this he was dependant on his overdraft and was already

struggling to meet his existing credit obligations. He thinks that MBNA should have done more thorough checks, including reviewing his bank statements, before deciding to lend to him. If it had done that, Mr C believes it would have realised that he was already spending beyond his means and wouldn't have approved his application.

Our general approach to complaints about unaffordable or irresponsible lending – including the key rules, guidance, and good industry practice – is set out on our website.

The rules don't set out any specific checks which must be completed to assess creditworthiness. But while it is down to the firm to decide what specific checks it wishes to carry out, these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments, the total cost of the credit and what it knew about the consumer at the time of application.

MBNA has said that at the time of application Mr C completed an income and expenditure form, setting out his income and fixed outgoings. It also reviewed his credit file to understand what his existing debt was and how it was being managed. Having done that it found that Mr C, who had a declared annual income of £13,000, had a loan and a credit card with combined balances of £1,690. The existing accounts were in good order and Mr C was meeting his repayments on time with no arrears. So, it felt the card would be affordable for him and didn't think it was necessary to do additional checks before approving his application.

Mr C has confirmed that his income was £13,000 at this time. He has also said that he had approximately £323 to £408 of disposable income each month after meeting his rent and other fixed living expenses. However, Mr C has provided evidence to show his gambling was already problematic at this time and that in reality he was using all of his disposable income, as well as funds from another credit card and overdraft facilities to fund that. So, he disputes that the card was genuinely affordable.

In order to decide if the lending decision was reasonable I need to consider what information MBNA gathered, and whether that was sufficient. If I think it was sufficient, I then need to consider whether or not the decision to lend was appropriate based on that information.

As stated above there are no fixed checks businesses have to complete and that means there is no obligation on businesses to ask to review bank statements as part of an application for credit. In Mr C's case MBNA didn't review his bank statements so had no sight of the types of transactions he was completing, or that he was gambling in a harmful way.

The checks MBNA did complete were basic, but there was nothing in those checks that indicated Mr C may be struggling to manage his finances. He had some open credit accounts, but at the time he applied for the card with MBNA, these were in good order and being properly managed. And without seeing the gambling spend on the account, there was no reason for MBNA to suspect Mr C didn't have access to the disposable income it appeared he had. So I can't say the business was wrong not to ask for more information or that the assumptions it made, based on the checks it completed, were unreasonable. Mr C has said he was reliant on his overdraft at the time, but it does appear that for the majority of the time his income was clearing this debt, albeit for a limited period. But again, this wouldn't have been evident from the checks that were completed, and as explained above I think the checks that were completed were sufficient. So, I can't uphold Mr C's complaint on that basis.

I do want to clarify that I don't doubt what Mr C has told us about his gambling problem. Or that it caused him financial hardship. I can see that he immediately used the card to gamble

and that by May 2016 MBNA had withdrawn the card from him, having realised what he was using it for as he quickly exceeded the limit and failed to make the minimum payment. But what I need to consider is whether or not MBNA should have realised Mr C was at risk of not being able to manage the card effectively at the time he applied for it and for the reasons I've explained above, I don't think it should have. Which means I can't uphold Mr C's complaint despite the fact he used the card in a harmful way.

Once MBNA realised what was happening with the card it withdrew it from Mr C and the account was eventually closed in July 2018 once the outstanding balance had been repaid in full. I think this was appropriate behaviour by the business as it helped to prevent Mr C from further harm by continuing to give him access to funds to gamble with. So, I don't think the business treated Mr C unfairly or that it failed to offer him support once it realised he was experiencing financial harm.

I've also considered whether MBNA acted unfairly or unreasonably in some other way, including whether its relationship with Mr C might have been viewed as unfair by a court under s.140A Consumer Credit Act 1974. However, for the same reasons I've set out above, I've not seen anything that makes me think this was likely to have been the case.

Therefore, having considered Mr C's complaint in full, I don't think MBNA failed to complete adequate checks at the time he applied for the credit card, and I don't think the subsequent lending decision was unreasonable based on the information gathered by those checks. Which means I'm not upholding Mr C's complaint.

My final decision

For the reasons set out above I don't uphold Mr C's complaint against MBNA Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 31 January 2025.

Karen Hanlon
Ombudsman