

Complaint

Mr D has complained about a credit card MBNA Limited ("MBNA") provided to him. He says that the credit card and the subsequent limit increases were unaffordable for him and they caused him ongoing financial difficulty as he had to borrow further in order to make his payments.

Background

MBNA provided Mr D with a credit card with an initial limit of £3,000.00 in November 2014. Mr D's credit limit was then increased to £6,000.00 in October 2015 and then £7,000.00 in April 2018.

In February 2024, Mr D complained saying that the credit card and the limit increases MBNA provided to him were unaffordable and caused him continued financial difficulty as he had to borrow further in order to make his payments.

MBNA did not uphold Mr D's complaint. It was satisfied that Mr D passed all of its checks when it agreed to offer the card and the limit increases and so it was reasonable to lend. It also pointed to the fact that it declined sixteen other applications for limit increases from Mr D as evidence that it didn't lend in circumstances where it wasn't responsible to do so.

When responding to our request for its file on Mr D's complaint, MBNA told us that it believed Mr D had complained about the initial decision to provide the card and the first limit increase too late.

One of our investigators reviewed what Mr D and MBNA had told us. And she thought MBNA hadn't done anything wrong or treated Mr D unfairly in relation to providing the credit card or increasing Mr D's credit limit on the occasions that it did. So she didn't recommend that Mr D's complaint be upheld.

Mr D disagreed and asked for an ombudsman to look at the complaint.

My findings

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

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. MBNA has argued that Mr D's complaint about the initial decision to provide the card and the first credit limit increase was made too late because he complained more than six years after these lending decisions; as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

Our investigator explained why it was reasonable to interpret Mr D's complaint as being one alleging that the relationship between him and MBNA was unfair to him as described in

s140A of the Consumer Credit Act 1974 (“CCA”). She also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I’ve decided not to uphold Mr D’s complaint. Given the reasons for this, I’m satisfied that whether Mr D’s complaint about the specific lending decisions was made in time or not has no impact on that outcome.

I’m also in agreement with the investigator that Mr D’s complaint should be considered more broadly than just the lending decisions. I consider this to be the case as Mr D has not only complained not about the respective decisions to lend but has also alleged that this unfairly impacted upon his financial position moving forward.

I’m therefore satisfied that Mr D’s complaint can therefore reasonably be interpreted as a complaint about the overall fairness of the lending relationship between him and MBNA. I acknowledge MBNA may not agree that we can look at parts of Mr D’s complaint, but given the outcome I have reached, I do not consider it necessary for me to make any further comment, or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mr D’s case, I am required to take relevant law into account. As, for the reasons I’ve explained above, I’m satisfied that Mr D’s complaint can be reasonably interpreted as being about the fairness of the lending relationship between him and MBNA, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (MBNA) and the debtor (Mr D), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Mr D’s complaint, I therefore need to think about whether MBNA’s decision to initially lend to Mr D, increase his credit limit on the occasions it did, or its later actions resulted in the lending relationship between Mr D and MBNA being unfair to Mr D, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr D’s relationship with MBNA is therefore likely to be unfair if it didn’t carry out reasonable and proportionate checks into Mr D’s ability to make his repayments in circumstances where doing so would have revealed the credit card or the limit increases to been unaffordable, or that it was irresponsible to lend. And if this was the case, MBNA then didn’t somehow then remove the unfairness this created.

I’ve considered Mr D’s complaint in this context.

Were the decisions to provide the credit card and subsequent credit limit increases unfair?

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Mr D's complaint.

MBNA needed to make sure it didn't lend irresponsibly. In practice, what this means is MBNA needed to carry out proportionate checks to be able to understand whether Mr D could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

MBNA says it initially agreed to Mr D's application after it carried out a credit search. And the information obtained indicated that Mr D would be able to make the monthly repayment due on this credit card. It says similar checks were carried out before Mr D's credit limit was increased on the occasions that it was and these checks also showed the limit increases to be affordable.

On the other hand, Mr D says that credit card and limit increases were unaffordable and that they caused him ongoing financial difficulty as a result.

I've considered what the parties have said.

MBNA's initial decision to offer Mr D a credit card with a credit limit of £3,000.00

What's important to note is that Mr D was provided with a revolving credit facility rather than a loan. And this means that to begin with MBNA was required to understand whether a credit limit of £3,000.00 could be repaid within a reasonable period of time, rather than in one go. It's fair to say that a credit limit of £3,000.00 required not insignificant monthly payments in order to clear the full amount that could be owed within a reasonable period of time.

MBNA has been able to show that it did carry out a credit search on Mr D at the time of his application. I understand that this credit search showed that Mr D had no significant adverse information – such as defaulted accounts or county court judgments ("CCJ") - recorded against him. Furthermore, Mr D had no secured lending and had active unsecured balances of just under £11,000.00 which were made up of a credit card and a loan.

MBNA says that Mr D declared a salary of £30,000.00 a year at this point and this combined with the credit file information meant that it was reasonable to conclude that Mr D could afford this credit card. Having reviewed a copy of Mr D's credit card agreement, I can see that this new card had a 0% balance transfer offer which meant that Mr D wouldn't pay any interest on any transferred balances for 29 months.

Having considered all of this, I'm satisfied that it did indicate that Mr D could make the repayments to clear a balance of £3,000.00 within a reasonable period of time. As this is the case, I'm satisfied that it was not unfair for MBNA to offer Mr D a credit card with a limit of £3,000.00 and therefore there was no unfairness created at this stage.

The credit limit increases MBNA offered to Mr D

As I've explained in the background section of this decision, MBNA increased Mr D's credit limit on two occasions. It increased Mr D's credit limit to £6,000.00 in October 2015 and then £7,000.00 in April 2018.

Bearing in mind the extra being granted at the time of the limit increases and the fact that Mr D could be left with having to repay £6,000.00 and then £7,000.00 within a reasonable period of time, I do think that it would have been reasonable and proportionate for MBNA to have found out a bit more about Mr D's regular non-discretionary living costs before offering these increases. As I can't see that this was something that MBNA did do, I don't think that it carried out reasonable and proportionate checks before providing the limit increases to Mr D.

That said, having looked at copies of the current account statements Mr D has provided, I'm not persuaded that Mr D's regular non-discretionary living costs were higher than what MBNA believed at the time of his application.

I accept that Mr D says that his actual circumstances at the time were worse than what this information shows. Having reviewed Mr D's bank statements, I have some idea why he may have gone on to have problems making his payments in the way that he said that he did. Nonetheless, I can't see how MBNA would have been aware of this as it didn't have copies of Mr D's bank statements.

For the sake of completeness, I'd also make it clear that it did not need to request bank statements either. MBNA simply needed to find out more about Mr D's non-discretionary living costs and add this to what it knew about his existing credit. It could have asked Mr D for evidence of bills or other proof of payment to verify this, if it felt it necessary to do so.

As I can't see that Mr D's actual living expenses and non-discretionary expenditure were much higher than what MBNA most likely assumed, I don't think that MBNA could reasonably be expected to know that Mr D's circumstances were worse than what proportionate checks are likely to have shown, or that this may have resulted in the limit increases being unaffordable.

So I can't see that requesting further information about Mr D's actual living costs, would have shown MBNA that it shouldn't have offered to increase Mr D's credit limit in October 2015 or April 2018. Consequently, I'm not persuaded that MBNA doing more here would, in any event, have made a difference to its decisions and I don't think that it was unfair for it to offer these credit limit increases, or that it doing so created unfairness either.

Overall, and based on the available evidence I don't find that Mr D's relationship with MBNA was unfair. I've not been persuaded that MBNA created unfairness in its relationship with Mr D by irresponsibly lending to him whether when initially agreeing to provide him with a credit card, or in respect of the credit limit increases. I don't find MBNA treated Mr D unfairly in any other way either based on what I've seen.

So overall and having considered everything, while I can understand Mr D's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mr D. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 3 March 2025.

Jeshen Narayanan
Ombudsman