

Complaint

Mrs H has complained about a credit card which she says Santander UK Plc unfairly lent to her.

This credit card was provided by a firm named Cahoot, which was a trading name of Abbey National Plc. Abbey National Plc went on to be acquired by Santander UK Plc and this is why it is responsible for answering Mrs H's complaint. However, for the sake of clarity and ease of reference, I will refer to Cahoot in this decision.

Mrs H says that the credit card was never affordable for her given her existing debts and so she shouldn't have been lent to.

Background

In February 2001, Cahoot provided Mrs H with a credit card. Cahoot has been able to confirm that the account was closed in June 2008. However, while Mrs H has said that she had a balance of around £5,500.00 at the time she entered into a debt management plan, Cahoot hasn't been able to confirm what credit limit it provided Mrs H with when it accepted her application for the card.

One of our investigators reviewed what Mrs H and Cahoot had told us. She hadn't seen enough information to be persuaded that Cahoot had done anything wrong or that it had treated Mrs H unfairly when it provided Mrs H with this credit card. So she didn't recommend that the complaint be upheld.

Mrs H disagreed and asked for an ombudsman to review her 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.

Having carefully considered everything, I'm not upholding Mrs H's complaint. I'll explain why in a little more detail.

I think it's worth me starting by explaining that given just how long ago the decision to lend took place, more than two decades, there is quite understandably an extremely limited amount of information that remains from the time. It may also help for me to explain that I have to reach my decision on the balance of probabilities. Where the evidence is incomplete and/or inconclusive (like it is here), I have to consider what is most likely to have happened in light of the evidence that does remain available and the overall circumstances.

In essence, Cahoot needed to make sure it didn't treat Mrs H unfairly. I've deliberately referred to Cahoot needing to ensure that it didn't treat Mrs H unfairly, rather than lend responsibly, as Mrs H applied for her Cahoot credit card in February 2001. This was not only before the current regulator's (the Financial Conduct Authority ("FCA")) rules and guidance came into force, in April 2014, it also predates the main guidance on irresponsible and

unaffordable lending that was introduced by the previous regulator of consumer credit (the Office of Fair Trading ("OFT")) in March 2010.

That's not to say that there weren't any expectations or standards at all in relation to lending at the time Mrs H applied for credit card. Indeed, I understand that Cahoot, or at least its then parent, was a subscriber to then British Bankers' Association's Banking Code, which was in place at the time. But it would be fair to say that Cahoot's obligations and responsibilities at the time were not the same as they are now. For example, the concepts of borrower focused assessments, proportionate checks and sustainability were not part of the expectations or requirements at the time.

What Cahoot agreed to do – as a result of it being a subscriber to the banking code – at the time of Mrs H's application, was assess whether it felt that she would be able to repay any lending.

I understand that Cahoot may well have carried out credit checks on Mrs H. Nonetheless, Cahoot no longer has the output of any the checks that it carried out at the time. And since it is no longer required to have this information more than 20 years later, I've not drawn any adverse conclusions as a result.

In any event, I've not seen anything to indicate that Mrs H had any significant adverse information – such as defaults or County Court Judgments ("CCJ") – recorded against her in February 2001. Mrs H has referred to adverse information of this type going on to be recorded against her. However, what she's said and provided suggests that this went on to happen from around 2005 onwards – so after this credit was provided.

Furthermore, while Mrs H has provided a list of her creditors and the amount she owed at the time she entered into a debt management plan in 2006, this doesn't show me what Mrs H's existing debt balances were in February 2001. For the sake of completeness, I should also say that while I've seen Mrs H has said that this information, in any event, shows that the amount of debt she was able to accrue was unsustainable, as I've explained, the concept of sustainability only came about with the publication of the OFT's irresponsible lending guidance ("ILG") in March 2010.

In this case, it's also important to note is that Mrs H was provided with a revolving credit facility rather than funds which needed to be repaid in a lump sum. And this means that Cahoot was required to understand whether Mrs H could repay whatever credit limit she was given within a reasonable period of time.

Cahoot clearly felt that Mrs H would be able to make such repayments. And there isn't anything from the time at least which clearly shows me that it wholly unreasonable for Cahoot to have reached this conclusion. I say this particularly as I'm not only lacking information on the checks carried out, but details on what credit limit Mrs H was provided with as well as an actual record of what Mrs H's financial circumstances were at this stage.

I appreciate that Mrs H may feel that it is unfair to expect her to provide information which she doesn't have and cannot reasonably be expected to have. But I also have to take into account that Cahoot isn't required to have retained all of this information either and it was Mrs H that chose to make her complaint in September 2023. As this is the case, I have to decide the complaint on what I have before me.

Furthermore, I can also understand why it may be frustrating for Mrs H that we aren't assessing the facts of her case against the standards and expectations she's referred to. It is only fair and reasonable for me to uphold a complaint where a firm failed to act in accordance with the obligations expected of it at the time - not obligations that went on to be

introduced a number of years later. Most of Mrs H's submissions are based on borrower focused assessments, proportionate checks and sustainability.

While these are standards which lenders have had to adhere to more recently, I'm afraid that I cannot reach the conclusion that Mrs H's complaint should be upheld for a failure to meet these standards when this credit card was provided a number of years before these standards and expectations were introduced.

As this is the case, I've not seen enough to be persuaded that Cahoot did anything wrong when providing this credit card to Mrs H. I've not seen anything to indicate that Cahoot failed to act in accordance with its obligations and expectations at the time that it agreed to lend to Mrs H in February 2001.

Finally, in reaching my conclusions, I've also considered whether the lending relationship between Cahoot and Mrs H might have been unfair to Mrs H under s140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I've not seen sufficient evidence to be persuaded that Cahoot irresponsibly lent to Mrs H or otherwise treated her unfairly in relation to this matter. And I haven't seen anything to suggest that s140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here.

So overall and having considered everything, I'm satisfied that Cahoot didn't treat Mrs H unfairly or unreasonably when lending to her. And I'm not upholding Mrs H's complaint. I appreciate this is likely to be very disappointing for Mrs H – as she clearly feels strongly about this matter. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 21 April 2025.

Jeshen Narayanan
Ombudsman