DRN-6023494

Complaint

Mrs P has complained that MBNA Europe plc ("MBNA") irresponsibly provided credit cards to her.

She says that the credit cards were unaffordable, trapped her in a long-term cycle of debt and caused her prolonged difficulty.

Background

MBNA provided Mrs P with two credit cards. The history on these accounts is as follows:

Card A

MBNA provided Mrs P with a first credit card ("Card A"), with a credit limit of £1,900.00 in March 2016. MBNA didn't offer Mrs P any limit increases on this credit card.

Card B

MBNA provided Mrs P with a second credit card ("Card B") which had a credit limit of £3,200.00 in August 2018. MBNA didn't offer Mrs P any limit increases on Card B either.

In February 2025, Mrs P complained saying that both of the credit cards MBNA provided to her were unaffordable, trapped her in a long-term cycle of debt and caused her prolonged difficulty.

MBNA didn't uphold Mrs P's complaint as it didn't think it did anything wrong when providing either card. Mrs P remained dissatisfied after MBNA's response and referred her complaint to our service. When providing its file of papers on the complaint, MBNA told us that it thought Mrs P had complained too late.

One of our investigators reviewed what Mrs P and MBNA had told us. She thought that she hadn't seen enough to be persuaded that MBNA failed to act fairly and reasonably when providing Mrs P with either of her credit cards. So the investigator didn't recommend that Mrs P's complaint be upheld.

Mrs P disagreed with the investigator's conclusions and asked for an ombudsman to look at 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.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. MBNA has argued that Mrs P's complaint was made too late because she complained more than

six years after the decisions to provide the credit cards; as well as more than three years after she ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why it was reasonable to interpret the complaint as being one alleging that the lending relationships between her and MBNA were unfair to her as described in s140A of the Consumer Credit Act 1974 ("CCA"). She also explained why this complaints about allegedly unfair lending relationships had been made in time.

Having carefully considered everything, I've decided not to uphold Mrs P's complaint. Given the reasons for this, I'm satisfied that whether Mrs P'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 Mrs P's complaint should be considered more broadly than just those lending decisions. I consider this to be the case as Mrs P has not only complained about the respective decisions to lend but has also alleged that the credit cards trapped her in a long-term cycle of debt and caused her prolonged difficulty.

I'm therefore satisfied that Mrs P's complaint can therefore reasonably be interpreted as a complaint about the overall fairness of her lending relationships with MBNA. I acknowledge MBNA still doesn't agree we can look at Mrs P's complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters. For the sake of completeness, I would add that this includes responding to Mrs P's arguments on why she believes she complained in time.

In deciding what is fair and reasonable in all the circumstances of Mrs P's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mrs P's complaint can be reasonably interpreted as being about the fairness of her relationship with 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 (Mrs P), 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 Mrs P's complaint, I therefore need to think about whether MBNA's decision to provide credit cards to Mrs P, or its later actions resulted in the lending relationships between Mrs P and MBNA being unfair to Mrs P, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mrs P's relationships with MBNA are therefore likely to have been unfair if it didn't carry out reasonable enquiries into Mrs P's ability to repay in circumstances where doing so would

have revealed the credit cards to unaffordable for her. And if this was the case, MBNA didn't then remove the unfairness this created somehow.

I've considered Mrs P's complaint in this context.

Our typical approach to unaffordable and irresponsible lending complaints

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 Mrs P's complaint.

Bearing in mind Mrs P's response to our investigator, I think that it would be helpful for me to set out that we consider what a firm did to check whether any repayments to credit were affordable (asking it to evidence what it did) and then determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

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 that information – 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, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion. Indeed, the requirements have not and still do not mandate a list of checks that a lender should use. Any rules, guidance and good industry practice in place over the years has simply set out the types of things that a lender could do when considering whether to lend to a prospective borrower.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what was done was fair to the extent it allowed the lender to reasonably understand whether the borrower could make their payments. Furthermore, if we don't think that the lender did enough to establish whether the repayments that a prospective borrower might have to make were affordable, this doesn't on its own mean that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances were we were able to recreate what reasonable checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

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

Card A

As previously explained, Card A was opened in March 2016 with a credit limit of £1,900.00. Both of Mrs P's credit cards, under the regulator's rules and guidance, are also known as revolving credit facilities. As these were revolving credit facilities, this meant that for Card A MBNA was required to understand whether Mrs P could repay £1,900.00 within a reasonable period of time. Not whether she could pay the entire amount in one go. What is important to note is that a credit limit of £1,900.00 didn't require high monthly payments in order to clear the full amount that could be owed within a reasonable period of time.

I understand that Mrs P declared that she had an annual income of just under £28,000.00. MBNA also carried out a credit check before initially agreeing to provide Card A. MBNA's credit checks appear to show that Mrs P didn't have any significant adverse information such as defaulted accounts or county court judgments ("CCJ") recorded against her.

Mrs P says that she shouldn't have been lent to because of her existing debts. However, I note that this credit card had a 0% interest rate offers for balance transfers. And Mrs P had the option of transferring some of her existing credit card debt, to a much lower interest rate, on to this account.

Indeed, I think that Mrs P applied for this credit card in order to transfer existing balances on to this account at 0% interest, as she went on to a transfer balance from an existing credit card onto this card when the card was initially opened. I'm therefore satisfied that Mrs P was always likely to pay less interest than she would have done had any balances stayed where they were and she was therefore able to make larger inroads into her balance.

In this context and it being the case that the information I've seen about Mrs P's circumstances does suggest that MBNA was reasonably entitled to conclude that Mrs P had the funds to make the payments required to repay £1,900.00 within a reasonable period of time, I'm satisfied that the checks MBNA carried out before agreeing to provide Card A were proportionate.

As this is the case, I'm satisfied that it wasn't unreasonable for MBNA to have agreed to have provided Mrs P with Card A in March 2016. It follows that I'm not persuaded that MBNA failed to act fairly and reasonably towards Mrs P when providing her with Card A and that there was no unfairness created at this stage.

Card B

As explained in the background section of this decision, MBNA subsequently provided Mrs P with Card B, which had a credit limit of £3,200.00, in August 2018. MBNA has said that it carried out credit searches on Mrs P and considered these results in conjunction with relying on Mrs P's conduct and record on Card A when deciding if it should accept the application for Card B.

Nonetheless, I think that given the amount being lent here and the fact that Mrs P still having Card A meant that there was the potential for her owing MBNA up to £5,100.00 across both cards, there is a reasonable argument for saying that it would have been reasonable and proportionate for MBNA to find out a bit more about Mrs P's actual committed non-credit related expenditure before offering Card B.

However, I don't think that proportionate checks would have extended into obtaining bank statements. I say this particularly as there is no requirement for a lender to obtain statements from a customer. Having considered the evidence Mrs P has provided, I don't think that MBNA obtaining further information on Mrs P's non-credit related expenditure at the time and supplementing what it knew about her credit commitments, is likely to have led it to conclude that she did not have the funds to sustainably make the repayments due.

So even though I think that there's an argument for saying that MBNA's checks ought to have gone further – and extended into finding out about Mrs P's committed living expenses, I don't think that it could have known that Mrs P may have gone on to have difficulty with her repayments, or that it obtaining the further information I think it needed to would have seen it make different lending decisions as a result.

As this is the case, I'm not persuaded that it was unfair for MBNA to have provided Card B to Mrs P or that any unfairness was created at this stage either.

Did MBNA allow Mrs P to use her cards in a way that was unsustainable or otherwise harmful for her?

Mrs P has also said that MBNA acted unfairly towards her as it continued to allow her to use this credit cards even though it ought to have taken action in relation to her usage of her credit card accounts. The regulator, the Financial Conduct Authority ("FCA") introduced new rules regarding persistent debt on credit cards. The final stage of these rules came into operation in 2020[1]. This stage of the rules permitted credit card providers to close a credit card to new spending where customers were not taking sufficient steps to reduce balances that were in persistent debt.

I think that Card B reached this stage in September 2022 and that is why it was closed to new spending. As a result, Mrs P was able to reduce what she owed and fully cleared the balance in February 2025. It should also be noted that the credit limit on Card A was also gradually reduced from this point forward – it was reduced to £900 in September 2022, before being reduced to £650 in July 2023. So it looks like MBNA did take steps to help Mrs P reduce what she owed.

I appreciate that Mrs P may feel that she will have repaid less had she not had to pay interest. However, these were interest-bearing credit cards and there isn't anything to indicate that Mrs P was mismanaging the accounts. MBNA let Mrs P know that she could repay her balance quicker if she increased her payments before the accounts went into the final stages of persistent debt.

I'm satisfied that reminding Mrs P of the interest she was paying and setting out was fair and reasonable bearing in mind MBNA's obligations under the regulations. Equally, while Mrs P has referred to her full credit report and what a full analysis of her financial position would have shown, this isn't what the persistent debt rules required MBNA to do. So I don't think that Mrs P's analysis of her position, which involved reviewed her overall financial position over multiple accounts, means that MBNA should have placed her accounts into the final stages of persistent debt earlier than it in fact appears to have done so.

Overall, and based on the available evidence I don't find that Mrs P's relationship with MBNA was unfair. I've not been persuaded that MBNA created unfairness in its relationship with Mrs P by irresponsibly lending to her. I don't find MBNA treated Mrs P unfairly in any other way either based on what I've seen.

As this is the case and having carefully considered everything, while I can understand Mrs P's sentiments and sympathise with what she's said about her financial position, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mrs P. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

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[1] The persistent debt rules actually came into force in 2018. This is when the first PD18 letters will have gone out. As the paydown plan phase starts at 36 months, it wasn't until 2020 where the first accounts will officially have been in persistent debt for the required time. It is only where this criteria was met that a lender was permitted to impose solutions aimed at helping reduce a customer's debt, without adverse credit information being recorded, irrespective of whether the customer was maintaining the account in line with the terms and conditions.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 9 March 2026.

Jeshen Narayanan
Ombudsman