

complaint

Mrs P complains that MBNA Limited won't remove a default marker from her credit file, relating to her outstanding credit card balance. Mr P complains on her behalf.

background

In May 2016 Mrs P opened a credit card account with MBNA. Mrs P said her son made the application under her name and she was present when he opened the account and that he did it with her knowledge. The application included a money transfer request of £10,000 to be paid into her son's bank account. The telephone number and email address on application were initially those of her son. Mrs P called MBNA on 7 June at its request. MBNA wanted to check Mrs P had authorised the money transfer. Mrs P passed the security and credit check and £10,000 was transferred to her son's account.

In or around July 2017 Mrs P applied for a loan but was rejected because of a credit rating issue Mrs P understood to be related to her MBNA account. Mrs P called MBNA to advise it that her son had been using the account and she thought he was making payments when in fact he had not been. At around the same time Mrs P made a complaint to the company that had bought her credit card debt from MBNA. In its final response MBNA said that it did not accept liability for the balance of the account and wouldn't remove the default from her credit file. Nor could it conclude that Mrs P hadn't been aware that she opened the account or completed the money transfer of £10,000.

Mrs P complained to this service. She believed that MBNA hadn't treated her fairly. She explained that while her son had opened the account with her knowledge and that she was present when he did it, at the time she didn't know he had a gambling problem. She said that she only became aware of a problem when she tried to apply for a loan. She said she'd been completely in the dark about what had been going on with the account and the inappropriate use of funds by her son. She thought MBNA had imposed quite a severe penalty on her and should remove the marker on her credit file.

The investigator felt unable to recommend that MBNA remove the adverse data from Mrs P's credit file. He noted that while Mrs P had said she'd had a fall just before the telephone call on 7 June and was on medication which may have affected her responses the money transfer request was on the application form. He felt this provided evidence that it was always Mrs P's intention to open the account and have the money transfer paid to her son. The investigator noted that MBNA tried to contact Mrs P by letter and text messages but did not receive a response.

Mr P, on behalf of Mrs P, asked if MBNA would remove the adverse data from Mrs P's credit file on compassionate grounds because they didn't know their son would use the funds to gamble and they had family bereavements around that time. Mr P accepted that MBNA had sent letters but indicated that they may have been intercepted by his son. MBNA said that it didn't agree that Mrs P was unaware of the status of her account. Mr P asked for a decision from an ombudsman.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I understand that Mrs P has had a difficult time of late having suffered family illness and bereavements. And I do feel for her and her husband as they navigate this challenging period. So I realise this will come as a disappointment to them both but I'm afraid I agree with the investigator and for the same reasons.

MBNA has provided contact notes and it's clear that a request for a money transfer of £10,000 to Mrs P's son's account was included on the application. Mrs P has said that not only was she aware that her son was making the credit card application but that she was present at the time. So I'm satisfied that she must have known about the money transfer request and that the funds would be paid into her son's account, importantly at the time of the application.

The bank placed a temporary restriction soon after and attempted to call, and then sent a letter to Mrs P asking her to contact it. I've seen the transcript of the call between Mrs P and the bank on 7 June 2016 at 15.40. The following exchange occurred:

Associate: On the application did you request a balance or money transfer?

Mrs P: Yes

Associate: You did, and how much was that for please?

Mrs P: Erm ten thousand

Associate: Ok and who, is that going into your account?

Mrs P: No into my son's account

Associate: Ok and you're fully aware that this ten thousand is going into your son's account and you'll be responsible for the payment and balance due?

Mrs P: Yes, yes.

Mrs P has said that at the time of this call she was heavily medicated due to a painful fall she'd had the previous day. She felt that the conversation with the bank after the fall was very challenging. So I've also listened to the call. While there was a short hesitation when the associate asked how much the money transfer was for I'm not persuaded that Mrs P wasn't aware of what she was saying as she talked very clearly. In my opinion she knew that the transfer had been on the application form, how much it was for and which account it was going into.

Mrs P has said she wasn't aware that her son was a gambler and had thought he was making payments. She told the bank that she had opened the account for her son to use to assist with hotel rooms but that she wasn't aware that the card had even been used. She told the bank her son was supposed to be monitoring the account. Given that Mrs P consented to the application in her name and she knew about the money transfer it follows that at the time of the application she would've been aware that she was then responsible for the payments and balance. And this was confirmed when she acknowledged this to the associate on the phone. I do appreciate that Mrs P may not have known how her son would choose to spend the money and didn't use the card in the way she expected but unfortunately this has not relieved her of the responsibility for the debt.

Between June 2016 and July 2017 Mrs P made no attempt to contact MBNA, or to make any payments. The balance transfer was completed before the first statement and was for a significant amount of money so Mrs P must have been aware that there would be payments due by the next month. Mrs P opened the account willingly and it was her responsibility to check over the course of the year that the account was in good order and that the minimum payments

were being met. It appears that she did not check that her son was using the account correctly and making payments. So it would be unfair of me to hold MBNA responsible for the fact that Mrs P didn't do so.

In her letter to the bank Mrs P says that the minute she found out something inappropriate was being conducted by her son she contacted MBNA group immediately. During the call back in June 2016 the associate changed the email and phone contact details to that of Mrs P. MBNA said it sent a significant number of text messages and emails as well as letters and I've seen evidence of this on the contact notes. It believes it's unlikely her son could have intercepted all of these messages without her knowledge. And on the balance of probability I am inclined to agree that Mrs P did at least receive some of these messages. Irrespective of that it was Mrs P's responsibility to check the account through the year to ensure that payments were made. So I won't be asking MBNA to remove the default as it is an accurate record of her account.

I do understand that this is not the news Mrs P wanted. She is very concerned that the default marker will be on her credit file for six years which not only affects her but also her husband as they share some financial interests. She believes that when the marker expires she would be of an age where no reputable lender would give her and her husband a loan. Mrs P has said that she and her husband will pay down the debt and if she does indeed do this it will help mitigate her credit situation. And with respect to Mrs P's age, lenders are not allowed to discriminate on the basis of age. In addition to this Mrs P can put a 'notice of correction' onto her credit file so this can be taken into account with future lending applications.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 2 March 2018.

Maxine Sutton
ombudsman