

The complaint

Mr M is complaining that MBNA Limited lent to him irresponsibly by providing him with a credit card.

What happened

In August 2020, MBNA approved Mr M's application for a credit card, giving him a limit of £13,000.

Mr M complained to MBNA in June 2023 saying they'd lent to him irresponsibly because at the time of the lending he already owed over £21,000 and had available credit of £92,000. He said he didn't think adequate affordability checks had been carried out, noting that he had an expensive lifestyle. He added he thought MBNA had placed too much reliance on his household income when checking affordability. And he said he'd split from his husband but the change in circumstances wasn't the reason the debt was unaffordable.

Mr M also complained about how MBNA had handled his account more recently, saying he'd had no contact from them other than demands to pay amounts that were simply unaffordable, which had "*made a mockery*" of the time he'd taken to explain his circumstances in detail to MBNA.

In their response to Mr M's complaint, MBNA said they had undertaken appropriate checks to make sure the credit card was affordable. They said they'd looked at information provided by Mr M in his application and reviewed data from Credit Reference Agencies (CRAs). They said they also calculated affordability by deducting his share of housing costs, monthly minimum repayments on existing debt, and an amount for living costs from his monthly take home pay. MBNA also said they felt they'd done what they could to help Mr M once he'd contacted them about his financial difficulties. In summary, MBNA didn't uphold Mr M's complaint so he brought it to our service.

One of our investigators looked into Mr M's complaint but also didn't uphold it. In summary, his view was that although MBNA hadn't done proportionate checks before lending to Mr M, they'd have been able to fairly decide to lend to Mr M if they had. He also said he thought MBNA had acted fairly in dealing with Mr M once he'd got in touch about his financial difficulties.

Mr M wasn't happy. He reiterated his view that MBNA's checks were inadequate and said if they'd reviewed bank statements before lending to him they might have avoided the situation. Mr M asked for an ombudsman's decision – and the matter's come to me.

What I've decided – and why

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

Having done so, and acknowledging that it'll be disappointing for Mr M, I'm not upholding his complaint for broadly the same reasons as our investigator – I'll explain more below.

What's required of lenders?

The Financial Conduct Authority (FCA) sets out in a part of its handbook known as CONC what lenders must do when deciding whether or not to lend to a consumer, or when increasing the amount they lend to a consumer. In summary, a firm must consider a customer's ability to make repayments under the agreement without having to borrow further to meet repayments or default on other obligations, and without the repayments having a significant adverse impact on the customer's financial situation.

CONC says a firm must carry out checks which are proportionate to the individual circumstances of each case.

Did MBNA carry out proportionate checks?

MBNA have told us they:

- Obtained Mr M's net monthly income and rental costs from his application;
- Used ONS data and Mr M's application data to estimate his disposable income; and
- Checked Mr M's credit file.

Whether or not these checks were proportionate depends on the amount and term of the lending, and what MBNA found. Mr M applied for a credit limit of £16,000 and MBNA approved a limit of £13,000. As it was revolving credit, there was no fixed term, but it's reasonable to assume with this amount of credit that it might take a few years to repay – and therefore my starting point is that the checks needed to be thorough. However, Mr M's stated income was relatively high, so it's unlikely that proportionate checks would have included a detailed analysis of his expenditure.

MBNA noted no adverse information on Mr M's credit file. They haven't sent us a full copy of the credit information they obtained but they estimated his repayments on existing credit commitments would be £723. CONC allows a firm to use CRA data to estimate a customer's credit commitments – so I can't say MBNA have acted unfairly in doing so.

MBNA deducted this figure, £1,500 for housing costs and £434 for essential living costs from Mr M's net income which they'd estimated at £5,712 per month based on his stated annual income. On that basis they determined he had disposable income of just over £3,000. I can't see any evidence MBNA took Mr M's household income into account as Mr M's alleged – it looks like they've only considered his own income.

However, MBNA didn't verify Mr M's income. CONC 5.2A.16G says it is not generally sufficient to rely solely on a statement made by the customer of their current income. Instead, a firm should obtain some independent evidence. So it follows I don't think MBNA did proportionate checks.

CONC 5.2A.27R requires a firm to assume when carrying out its assessment that the entire credit limit will be drawn down at the earliest opportunity and repaid in equal instalments over a reasonable period. It's not clear what assumptions MBNA made, but I'm satisfied they could have reasonably assumed Mr M would need to pay them around £400 per month. Initially, Mr M would need to pay more though – the minimum payment required by the terms of the agreement would be around £500 - £550 for the first few months.

CONC does allow a firm to use statistical data to estimate living expenses unless the firm has reasonable cause to suspect the customer's non-discretionary expenditure is significantly higher than that described in the data. I can't say that's the case here – although Mr M had significant amounts of credit, there's no sign from his credit file that he was struggling to meet those commitments. And it appears he'd have had disposable income of around £2,500 after making reasonable payments on the MBNA card. So I can't say MBNA shouldn't have used statistical data in Mr M's case. In addition, a firm only needs to consider non-discretionary expenditure. Mr M's described himself as having had a good lifestyle – which suggests the high expenditure he's referred to likely included a high amount of discretionary spending.

In summary, I'm not satisfied MBNA did proportionate checks – they should have verified Mr M's income before deciding to lend to him.

If MBNA had done proportionate checks, what would they have found?

Proportionate checks would have involved MBNA verifying Mr M's income. They might have done this using payslips or bank statements or using some other independent evidence.

Mr M has sent us his bank statements from around the time of his application. These show Mr M's monthly net take-home pay was around £5,050.

In addition, I've looked at Mr M's credit file to give me a clearer idea of the level of his debts at the time of his application. Mr M has commented on the amount of credit he had access to, but we'd only expect a business to take into account actual borrowing levels. It appears Mr M's credit balances totalled around £30,000 in August 2020. CONC requires a business to assume a customer will repay their debts in a sustainable way, rather than making minimum payments. In this instance, I'd suggest MBNA should have used around 5% of the £30,000 as a sustainable repayment amount. That would mean Mr M would have had to spend around £1,500 per month repaying his existing debts.

So if MBNA had done proportionate checks, they'd have found Mr M's net income was typically around £5,050 per month, and deducted £1,500 for housing, £1,500 for credit commitments, and £434 for essential living costs. They'd have estimated he'd have around £1,616 disposable income, of which he'd need to pay around £400 - £550 to themselves each month – leaving Mr M with over £1,000 each month for discretionary spending. Even if MBNA's estimate of Mr M's non-discretionary expenditure was on the low side, this is a significant buffer. So I'm satisfied if MBNA had done proportionate checks they could have fairly decided to lend to Mr M.

I note Mr M's expectation that MBNA should have looked at his bank statements – and therefore that we should. I haven't looked at his bank statements beyond verifying his income. I don't think MBNA needed to in order to carry out proportionate checks – as I've explained above, they're allowed to use statistical data as long as they have no reason to believe a customer's non-discretionary expenditure is significantly higher than that reflected in the data. I haven't seen anything that should have prompted MBNA to do additional checks.

Did MBNA act unfairly in any other way?

Mr M has complained about the way MBNA have handled his account since he fell into financial difficulties. He's shared a lot with us about his situation, and I appreciate he's been through a very difficult period both personally and financially.

CONC 6 requires a business to monitor a credit card customer's account and take appropriate actions where there are signs of actual or possible financial difficulties. CONC 1.3 sets out indicators of financial difficulties which include consecutively failing to meet minimum repayments and evidence of discussions with a view to entering into a debt management plan or other debt solution.

I can't see Mr M met any of the indicators of financial difficulties until November 2022, when he contacted MBNA and told them that the one-month hold he'd got through their website wasn't realistic for him. Looking through MBNA's contact notes for the months that followed, I'm satisfied they provided appropriate support for Mr M, including placing holds and interest freezes on his account and signposting him towards debt advice charities and mental health support. I can see Mr M didn't want the account defaulted, and told MBNA that his situation was likely to improve once his divorce was finalised and he'd started a new permanent job. Looking through Mr M's credit card statement, I can see MBNA haven't added interest to the account since August 2022.

Mr M's complained in particular about MBNA writing to him in June 2023 asking him to pay his arrears of £1,800 and monthly payment of £300. I can understand why he was upset by this – it's clear that he was in significant financial difficulties at the time and he'd explained his situation in detail to MBNA in the past.

However, the notes from Mr M's last call with MBNA before this in April 2023 say that Mr M was hoping to get a lump sum from the divorce settlement and clear some of the balance. They say Mr M was hoping his situation would improve. And they noted that MBNA had explained to Mr M on the call that they were unlikely to be able to put another temporary plan in place after this one and that he could contact them before the end of the three months if the divorce settlement wasn't what he hoped for. They also warned him that they'd likely have to look at account closure if there was no change at the end of the three months. So I think MBNA had been clear with Mr M that they wouldn't be able to continue putting his account on temporary holds. And they'd suggested he call them to update them on his situation.

On balance, whilst I appreciate it might have been better if MBNA had called Mr M at the end of the temporary hold instead of writing to him, I can't say they should have done. CONC 7 requires a firm to treat customers in arrears fairly and with forbearance and due consideration. The statement of arrears they sent offered the option of calling MBNA and wasn't a demand for immediate payment. And I can't expect MBNA to keep an account open without charging interest for an extended period so I can't say it's unfair for them to be suggesting that defaulting the account might be the only option left available.

In summary, I'm satisfied MBNA have treated Mr M fairly and with forbearance and due consideration so I'm not upholding this aspect of his complaint.

My final decision

As I've explained above, I'm not upholding Mr M's complaint about MBNA Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 April 2024.

Clare King
Ombudsman