

## **Complaint**

Miss C is unhappy with what MBNA Limited (“MBNA”) has agreed to do to put things right after she complained about having been irresponsibly provided with a credit card.

## **Background**

In April 2023, MBNA provided Miss C with a credit card which had a credit limit of £5,300.00. Miss C wasn't provided with any subsequent credit limit increases. In January 2024, Miss C subsequently complained that MBNA shouldn't have provided her with her credit card as it ought to have realised that it was unaffordable for her. MBNA didn't uphold Miss C's complaint and as she was dissatisfied at this, Miss C referred the matter to our service.

After Miss C referred her complaint to us and before our investigator issued her assessment, MBNA accepted that it shouldn't have provided Miss C with her credit card. It agreed to refund all of the interest, fees and charges applied to the card from the outset by reducing what Miss C owes on her credit card and ensuring that she pays no more than the amount she was lent in the first place.

Our investigator thought that what MBNA had agreed to do was fair and reasonable in all of the circumstances of Miss C case and issued an assessment confirming this.

Miss C disagreed with our investigator's conclusions and asked for an ombudsman's decision.

## **My findings**

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

The first thing for me to say that I know Miss C strongly believes that she shouldn't have been lent to and she has provided a number of reasons why. However, MBNA agrees that it shouldn't have provided Miss C with a credit card and in large part this is because of the reasons she has provided.

As this is the case, I don't need to consider whether MBNA acted fairly and reasonably in deciding to lend to Miss C. I simply need to determine whether what MBNA has offered to do to put things right for Miss C is fair and reasonable in all the circumstances of her complaint.

Having carefully considered everything, I'm satisfied that what MBNA has already agreed to do to put things right for Miss C is fair and reasonable in all the circumstances of her complaint and I'm not requiring MBNA to do anything more or anything further. I'll explain why I think this is the case in a bit more detail.

Bearing in mind that Miss C has referred to our published guidance, I think that it might help for me to start by explaining that where a business accepts (or we decide) it did something wrong, as a general starting point we'd look to the business putting the consumer, as close as practically possible, to the position they would be in if that wrong hadn't taken place.

In an ideal world, this would mean us expecting a business to put a consumer in the position they'd now be if what has been complained about hadn't happened. However, in cases concerning irresponsible lending that's simply not possible as the funds that shouldn't have been advanced were lent. As the lent funds will have been used and spent it's effectively too late to wind things back.

In these circumstances, we have to look at some other way of asking a business to put things right in a fair and reasonable manner and bearing in mind what is practically possible. Where a business provided a credit card that would have resulted in unaffordable payments for a borrower, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any interest and charges on that credit.

This would see the customer repay the funds that they borrowed and had the use of, but we'd normally expect the lender to refund (or remove) any interest and charges that were added. And if those interest and charges were paid also add 8% simple interest per year. This usually balances the fact that lender shouldn't have lent to the consumer against them having benefitted from the decision – in terms of having funds they wouldn't have had and having spent funds which, in many cases, they may well have known they were unlikely to be able to repay.

In this case, MBNA has agreed to remove all the interest, fees and charges it added to Miss C's account from the outset. It has also agreed that it won't add any further interest going forward. This will limit the amount that Miss C has to repay to the amount that she has spent on her credit card. So it effectively proposes to cap the amount Miss C has to pay to the amount that she was originally lent in the first place, in order to put things right.

I'm satisfied that what MBNA has agreed to do here is place Miss C in the position that she would be if she hadn't had any interest or charges added to her credit card and therefore in line with what we'd typically say it should do if we were to have upheld the complaint.

Miss C disagrees that what MBNA has proposed to do is in line with our approach. She says this will not place her in the position she would have been in if MBNA had not have lent to her. But as I've explained earlier, while placing a consumer in the position they would be in, had the wrong being corrected not taken place, is merely a starting point for how a respondent firm should put things right for a customer. And it's not something that is possible to do in an irresponsible lending complaint.

For the sake of completeness, I'd also point out that requiring MBNA to write off some of Miss C's debt, in the way that she says it should, wouldn't place her in the position that she would be in had MBNA not lent to her either. I say this because Miss C had the use of the items she used her credit card to purchase and which resulted in the accumulation of the amount she owes.

Reducing the part of Miss C's balance made up of her purchases, will result in Miss C having had the benefit of the items purchased, without having to repay the funds she used to do so. And, in these circumstances, she would be in the position where she would have the items she purchased without the associated debt. In my view, taking such an approach would actually place her in a better position than she would have been in, rather than the position she would be in, had she not been lent the funds.

Therefore, while I appreciate that Miss C may disagree with this, I'm satisfied that MBNA has already agreed to do what I'd normally expect a firm to do in these circumstances and has proposed to do so in a way that is in line with what I'd typically tell a firm to do to put things right where a firm lent irresponsibly.

That said, we do look at each case individually and on its own particular merits. While we do have a general approach to how we might tell a lender to put things right where it provided a credit card that it shouldn't have (such as here), we can and will sometimes tell it to do something different. So I could tell MBNA to do something more if a strong reason to depart from our general approach exists and it would be fair and reasonable to do something else in the circumstances of that individual case.

Miss C believes that MBNA should do more here. As I understand it, she wants MBNA to reduce what she will owe to what she will pay through her debt management plan ("DMP") over the next three years and up until her DMP is reviewed in 2027. Miss C also wants MBNA to remove any and all adverse information it may have recorded about this credit card from her credit file too.

I've carefully thought about what Miss C has said. The first thing to say is that MBNA has agreed to accept payments through Miss C's DMP. I realise that Miss C is anxious about what could happen when her DMP needs to be reviewed in three years' time. However, while I appreciate that Miss C is worried about changes that could impact her finances in three years' time, the reality is I don't know what Miss C's position is likely to be in 2027, at this stage.

I accept that it is possible that Miss C's mortgage payments may increase in 2027. But it is also possible that that may stay the same, or that they may not increase by as much as she anticipates them increasing to in 2027. It is not beyond the realms of possibility that Miss C's income could increase by this stage. Finally, I don't know whether Miss C will make all of payments due on her DMP up until 2027 either. The truth is there are a number of variables here and I have no way of knowing what the position will actually be in 2027.

I don't think that it would be fair and reasonable for me to try and anticipate what might happen and make a direction in relation to what MBNA should do when Miss C's DMP is reviewed, when I don't know what that review is likely to show. I say this while mindful that MBNA, or whomever that may own Miss C's balance, at the relevant time, will in any event, be required to review matters and take account of what Miss C is able to pay going forward at that stage.

Indeed, it seems to me that it would be fair and reasonable for a further review of Miss C's prospects of being able to repay any balance that might remain owing in 2027, once her DMP has been reviewed, to take place rather than for me to make a speculative direction based on what her position may or may not be like at this stage.

Finally, MBNA is merely one creditor in Miss C's DMP. I don't think it would be fair and reasonable for me to require MBNA to write off the remainder of what Miss C might have left to pay in 2027, when any review will take into account what payments Miss C will be able to make and to whom. As this is the case, while I sympathise with Miss C's position, I'm not requiring MBNA to reduce Miss C debt or write off any balance that remains at the time her DMP is reviewed in 2027.

I turn to Miss C's credit file. Miss C argues that any and all adverse information MBNA may have recorded regarding this agreement should be removed from her credit file. I've thought about what Miss C has said and I do sympathise with what she's told us. I fully appreciate why she's unhappy with adverse information being recorded on her credit file and that she's worried about the impact this will have.

But I have to take account of the fact that a balance will remain outstanding here. Asking MBNA to remove all adverse information here will effectively see it needing to record that

this balance no longer needs to be repaid (in circumstances where I've already explained why it would be fair and reasonable for it to be), or that Miss C is up to date with her payments, when she is not.

This would see MBNA recording information that doesn't reflect the position that Miss C is in and which is wholly inaccurate. In my view, recording such information would not only be inaccurate but it would also arguably be counterproductive and not in Miss C's interests or that of any future lender, as a future lender would not be able to factor in what Miss C owes to MBNA into any decision on whether providing any further lending is affordable to her.

So I'm satisfied it is fair and reasonable for any adverse information to be recorded about Miss C's credit card to remain for the period an outstanding balance remains while MBNA is entitled to report this i.e. taking into account MBNA still owing any debt and if and when a default is recorded. Although MBNA should ensure that it is not reflecting that Miss C owes more than she will owe should she accept its offer.

Finally, I've also thought about what Miss C has said about MBNA not being held to account for its errors. In the first instance, I'm not necessarily persuaded that MBNA is going to be in a position where it hasn't suffered any consequences. It is going to be limited to only recovering the amount it lent and even then it is going to take some time for Miss C to repay these funds, if she's even able to do so at all.

In any event and most importantly, I think it would help for me to explain that it isn't for this service to punish MBNA for the errors it has admitted took place when lending in this instance. What I have to do is consider whether any proposal to put things right addresses Miss C's loss. I know that Miss C doesn't agree that what MBNA has agreed to do does adequately address her loss. But, for the reasons I've already explained, I'm satisfied that it does do so. And whether or not it also deters MBNA from lending in similar circumstances in the future, is not a relevant consideration to me determining what is fair and reasonable in all the circumstances.

Overall and having considered everything, I'm satisfied that what MBNA has already agreed to do to put things right for Miss C is fair and reasonable in all the circumstances of this case and I'm not requiring it to do anything further. So I leave it up to Miss C to decide whether she wishes to accept MBNA's offer.

I appreciate that my findings here will be extremely disappointing for Miss C – especially as she feels as though she will be left with a debt she cannot repay. I do appreciate her strength of feeling on this matter. Furthermore MBNA will be expected to exercise forbearance and due consideration in line with its regulatory obligations should it still own Miss C's debt and Miss C's circumstances do change for the worse in the way she expects them to in 2027. I hope that Miss C will 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 satisfied that what MBNA Limited has already agreed to do to put things right for Miss C is fair and reasonable in the circumstances of her complaint. I'm not requiring it to do anything further and I leave it up to Miss C to decide whether she wishes to accept MBNA's offer.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 1 August 2024.

Jeshen Narayanan  
**Ombudsman**