DRN-4993700

The complaint

Miss V is complaining about MBNA Limited because she says it lent irresponsibly when increasing the credit limit on her credit card.

What happened

In 2011, Miss V opened a credit card account with MBNA. In September 2018, it increased the credit limit from £7,500 to £9,000. This was increased again to £11,500 in May 2019 and £16,400 in April 2020. Miss V requested the increase on each occasion. She isn't complaining about previous lending decisions on the account but doesn't believe these increases should have been approved.

After the complaint was referred to me, I issued my provisional decision setting out why I thought it should be upheld. My reasons were as follows:

Before lending to Miss V, MBNA was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider in respect of each lending decision are:

- *Did MBNA complete reasonable and proportionate checks to establish Miss V would be able to repay the credit in a sustainable way?*
- *If so, was the decision to lend fair and reasonable?*
- *If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?*

The rules, regulations and good industry practice in place at the time the credit was approved required MBNA to carry out a proportionate and borrower-focused assessment of whether Miss V could afford the repayments. This assessment also had to consider whether the credit could be repaid sustainably. In practice this meant MBNA had to satisfy itself that making payments to the credit wouldn't cause undue difficulty or adverse consequences. In other words, it wasn't enough to simply think about the likelihood of her making payments, it had to consider the impact of the repayments on Miss V.

The affordability assessment and associated checks also had to be proportionate to the specific circumstances. What constitutes proportionate checks depends on a number of factors including, but not limited to, the particular circumstances of the consumer (for example their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of the credit being considered. Even for the same customer, a proportionate check could be different for different applications.

I've considered MBNA's lending decision for each of the above credit limit increases separately:

Credit limit increase to £9,000 in September 2018

MBNA has described the information it gathered to assess whether further credit was affordable for Miss V before it was approved. This included:

- *information contained in her application, including her income;*
- *information obtained from a credit reference agency (CRA), giving details of her existing credit arrangements and any past issues with credit; and*
- *information it held about the previous conduct of her account.*

MBNA maintains its affordability assessment was proportionate to the credit being given and demonstrated it was affordable. It's also pointed out the account balance was nil at the time of this increase and that Miss V took advantage of a promotional rate to transfer around £8,400 from other cards once it was approved.

The information provided shows MBNA recorded Miss V's income as £36,000. It's been presented to us in a way that suggests this was recorded as her monthly rather than annual income. In my view, it was very unlikely Miss V had a monthly income of £36,000 and I wouldn't expect this figure to have been accepted without further checks being completed.

The credit check completed by MBNA shows Miss V had existing revolving credit of £12,700, which is high, although she appears to have been up to date with payments and had no recent history of missed payments or defaults.

On balance, I don't think the checks carried out were proportionate to the credit being offered on this occasion. The proposed new credit limit was high and Miss V already had a significant balance of revolving credit on other cards. I don't think it was appropriate to approve this increase without a more detailed consideration of Miss V's circumstances. This view stands irrespective of whether MBNA believed Miss V's recorded income of £36,000 was a monthly or annual amount.

I can't know exactly what further checks MBNA might have carried out at the time, but I think a consideration of Miss V's actual income and expenditure would have been reasonable. So we've obtained copies of her credit report and bank statements for the period prior to the lending to establish what information could reasonably have been discovered.

Miss V's bank statements show her monthly income from employment was around £1,880. She received a higher payment of £3,600 from her employer in June 2018, but she's told us this was an annual bonus and it's not clear it was guaranteed. If this was taken into account in calculating her monthly income from employment, it would increase the total to around £2,025 if spread evenly across the year.

Miss V also received a regular monthly income of £100 in respect of a property she owned. She says she purchased the property some years earlier but couldn't continue living in it after it was broken into and moved in with her parents instead. Rather than sell the property with negative equity, she says she set up an agreement with a company that took responsibility for paying the mortgage and upkeep costs. In exchange, it was able to rent the property out and retain the income. As part of the agreement, Miss V also received a regular income of £100 per month that she says was a fee paid so the company could retain the option to buy the property at a later date. When this arrangement is taken into account, it increases Miss V's total monthly income to £2,125.

The credit report provided by Miss V shows she had considerably more debt than MBNA has told us was revealed by its credit check. In addition to her existing credit cards that

MBNA did take account of, her credit report shows she had three substantial loans with monthly repayments of £349, £291 and £520. One of these had 59 months to go, one 56 months, and the other 24 months. So none would have been expected to end anytime soon. In terms of her existing revolving credit, I think it's reasonable to assume a monthly cost of £635, which is 5% of the outstanding balances. I realise this is higher than the minimum payment on most cards but I think paying off this amount each month would have allowed her to clear the balances within a reasonable period of time. Much less than this and the credit would be unsustainable as there'd be no real prospect of the balances being cleared. All of this means the cost of Miss V's existing credit commitments totalled around £1,795 per month.

MBNA didn't complete an expenditure assessment before approving this credit limit increase. But it did complete an assessment for the next increase only a few months later that estimated Miss V's monthly housing and essential living costs were £618. I've seen nothing to suggest Miss V's circumstances changed significantly between the two dates and I think it's reasonable to use that figure as a proxy for what MBNA would have concluded if it had carried out a similar assessment at this time.

Based on these figures, Miss V's essential monthly expenditure was around £2,400. This compares to her monthly income of around £2,125. On the basis that Miss V's essential expenditure was greater than her income, I think it's clear MBNA should have concluded that further credit was unaffordable and declined to lend.

In reaching this conclusion, I have been mindful that Miss V took advantage of a promotional rate to transfer balances from other cards. But this benefit was only temporary and unless she closed any of her other accounts - MBNA doesn't seem to have asked about her intentions and couldn't make her close other accounts anyway – the amount of credit available to her and the potential monthly cost of repayments in the longer term was increased.

Credit limit increase to £11,500 in May 2019

In addition to the information obtained for the previous credit limit increase, MBNA has told us it also carried out an estimate of Miss V's housing and other essential living expenses based partly on modelled statistical data. I've seen nothing to indicate the additional credit offered at this time was used to pay off any of Miss V's other debts.

On this occasion, MBNA worked on the basis that Miss V's monthly income was £2,033 - I estimate this equated to approximately £30,000 per year. Its credit check reported she now had considerably more debt than previously. In addition to £17,600 of revolving credit, which is significantly more than at the date of the previous limit increase only a few months earlier, she also had loan debt of £37,700. This meant her total debt was over £55,000. Debts of nearly twice her annual income suggests Miss V was heavily indebted and I think this should have prompted MBNA to carry out more thorough affordability checks. I don't believe an assessment of affordability based partly on modelled statistical data constituted a proportionate assessment on this occasion.

As before, I can't know exactly what further checks MBNA might have carried out at the time, but I think a consideration of Miss V's actual income and expenditure would have been reasonable. So I've referred to the credit report and bank statements for the period prior to the lending to establish what information could reasonably have been discovered.

By this time, the bank statements show Miss V's regular income from her employer was around £1,950. When the additional £100 she was also receiving from the property is *taken into account, this brings the total to £2,050 – very close to the figure used by MBNA in its calculation.*

The credit report shows Mrs V had the same three loans with a combined monthly repayment of £1,160. And a reasonable repayment towards her revolving debt, based on paying 5% of balances each month, was £883. So the total monthly cost of her existing credit commitments was £2,043. When housing and other living costs are also taken into account, even if MBNA's estimates are used, the evidence indicates Miss V's expenditure exceeded her income and I think it's clear that MBNA should have concluded further credit was unaffordable and declined to lend.

Credit limit increase to £16,400 in April 2020

For this limit increase, MBNA carried out the same type of assessment as it did for the previous one, which included an estimate of Miss V's housing and other essential living costs based partly on modelled statistical data. It's also told us that once the increase was approved, Miss V transferred other debt worth around £15,300 from other cards to take advantage of a promotional rate.

On this occasion, MBNA calculated Miss V's income was assumed to be £1,737. And the credit check appeared to show her debt had reduced significantly to only £5,047, all of which was revolving debt. So her situation seemed to have improved considerably. But, given MBNA says she transferred over £15,000 of debt from other cards once the limit increase was approved, it seems unlikely this figure was correct although MBNA probably couldn't have known that from the checks it actually completed.

Even allowing for the fact that MBNA reasonably believed Miss V's debt was now considerably lower than before, I still think further checks were required to complete a proportionate affordability assessment. The proposed new limit was high and, if it had carried out appropriate checks previously, it would have known Miss V had recently been in a situation where her expenditure significantly exceeded her income.

As before, I can't know exactly what further checks MBNA might have carried out at the time, but I think a consideration of Miss V's actual income and expenditure would have been reasonable. So I've referred to the credit report and bank statements for the period prior to the lending to establish what information could reasonably have been discovered.

In terms of Miss V's income, her bank statements indicate this was higher than assumed by MBNA. Her regular monthly income from employment was £2,000 and she was still receiving around £100 from the property, taking her total monthly income to £2,100.

The credit report shows Miss V had repaid the three loans she had previously, but that she'd since taken a new loan with a monthly repayment of £314 over four years. And 5% of the balance of her existing revolving credit (as revealed by MBNA's credit check) was £252. This would make the total monthly cost of her existing credit £566. As I've said above, it seems likely this figure should be higher if Miss V did indeed transfer balances of over £15,000 to her MBNA card but unfortunately the credit report provided doesn't record historical balances on her accounts.

This notwithstanding, I don't think the credit report gave a true reflection of Miss V's actual position. She says her loans were cleared because her partner remortgaged his property to release capital that was used for this purpose. She says she made payments to him each month to cover the cost of the additional mortgage payment and her bank statements show regular payments totalling £663 per month. I think this is something

MBNA should have questioned and Miss V's explanation here is plausible. It's consistent with the evidence available and it's unclear how else she would have been able to repay her previous loans. If this is taken into account, and ignoring the fact that my calculation of the costs of her revolving debt is probably too low, it's likely the real cost of Miss V's existing debts was around £1,229 per month.

MBNA estimated Miss V's housing and other essential living expenses to be £595, slightly lower than calculated at the time of the previous limit increase. I've certainly seen nothing to indicate these costs would have been lower that that. If anything, I think her costs would have gone up as she'd been living with her parents when the previous limit increases were offered and had now moved in with her partner. But if it's assumed MBNA's estimate was reasonable, this meant her total outgoings were likely to be around £1,824.

When this figure is compared to Miss V's income, it shows there was very little remaining to cover the cost of further debt and any discretionary or unplanned expenditure. If MBNA had discovered this information, as I believe it should have, it's my view that it ought to have concluded further credit was unaffordable for Miss V and declined to lend.

In summary

For the reasons I've explained above, I believe MBNA should have carried out additional checks as part of a proportionate affordability assessment each time it increased the credit limit on Miss V's account in September 2018, May 2019 and April 2020. If it had done this, based on the information that it could reasonably have been expected to discover, I think it should have concluded repayments on additional credit were unaffordable and declined to lend. It's for these reasons that I'm currently proposing to uphold this complaint.

Miss V accepted my provisional decision without further comment. MBNA didn't accept my conclusions on the first credit limit increase in September 2018 but did accept the increases in May 2019 and April 2020 weren't affordable as it was evident by then that Miss V was recycling debt. In defence of its decision to offer further credit in September 2018, MBNA made the following key points:

- I said Miss V's outgoings wouldn't have changed significantly between September 2018 and May 2019, but she was actually living with her parents at the earlier date and didn't have any significant outgoings.
- In assessing whether further credit was affordable, I shouldn't have taken the loan with a monthly repayment of £349 into account. It was only taken the month before the credit increase and wouldn't have shown up on Miss V's credit file at the time due to delays in reporting.
- Her bank statements show Miss V's mortgage was being covered by the agreement she had with the company that took over responsibility for the maintenance and upkeep of her property.
- Miss V was managing her MBNA account well at this time and the card had a zero balance. Her credit file shows she'd also just cleared the balance on another card.
- Miss V had also managed to accrue savings of £800 at this point.
- Miss V continued to manage her account well after the credit limit increase, initially

paying above the minimum monthly payment.

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, my findings haven't changed from those I set out previously. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

It remains my view that the credit limit increase in September 2018 was unaffordable. MBNA doesn't seem to be disputing my view that it should have carried out a more detailed affordability assessment. In considering the conclusions it should have drawn after completing further checks, I've referred to the information I believe it could reasonably have discovered at the time. It clearly couldn't have known how Miss V would manage her account after the limit increase was applied. But in response to the other points raised by MBNA.

- The fact Miss V may have been living with her parents in September 2018 could have meant her living costs were lower than they were in May 2019. But it doesn't mean she didn't have any essential living costs. For the reasons explained previously, it appears Miss V's expenditure (including debt repayments) significantly exceeded her income based on estimated living costs of £618 – the figure used by MBNA in May 2019. Even if it's assumed her essential living costs were significantly lower than this, she still wouldn't have been able to afford the additional credit being offered.

- There's no dispute that the loan with a monthly repayment of £349 was in place before MBNA applied the credit limit increase. I can't be sure whether this would have been reported on her credit file by the time it made its decision to lend. But either way, the credit file wasn't the only way that additional information could have been discovered. For example, MBNA could have asked Miss V whether she'd taken on any additional credit commitments recently.

- I didn't include any mortgage commitment in my calculation of Miss V's outgoings as I understood this was being covered by the company she'd made an arrangement with.

- I can see the fact Miss V had a zero balance on her MBNA card and had repaid another card recently would have provided some reassurance about the affordability of further credit. But this information needed to be considered as part of a much wider affordability assessment. For the reasons I've set out, I still believe that wider assessment should have led to the conclusion that further credit was unaffordable.

I understand why MBNA has referred to Miss V's savings. But the amount she'd saved was small, particularly compared to the amount owed on her various credit commitments. And as before, this information would only have been part of a much wider affordability assessment that should have led MBNA to conclude further credit wasn't affordable.

Putting things right

The principal aim of any award I make must be to return Miss V to the position she'd now be in but for the errors or inappropriate actions of MBNA. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think MBNA should have lent to Miss V, I don't think it's fair for her to pay interest or charges on the amount borrowed. But she has had use of the money that was lent, so I think it's fair she repays the amount borrowed (without the addition of interest or charges).

To put things right, MBNA now needs to take the following steps:

- Rework the account to remove all interest, fees, charges and insurances (not already refunded) that have been applied since the limit increase in September 2018 on balances over £7,500.

- If the reworking results in a credit balance, this should be paid to Miss V with the addition of simple interest at 8% per year from the date of each overpayment to the date of settlement.

  HM Revenue & Customs (HMRC) requires MBNA to deduct tax from any interest. It must provide Miss V with a certificate showing how much tax has been deducted if she asks for one. If MBNA intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- Or, if after the reworking there's still an outstanding balance in excess of £7,500, MBNA should arrange an affordable payment plan with Miss V for the shortfall.

- Remove any adverse information recorded on Miss V's credit file after September 2018 relating to this credit, once any outstanding balance over £7,500 has been repaid.

If MBNA no longer owns the debt, it should liaise with whoever does to ensure any payments Miss V has made since moving the account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

In reviewing this complaint, I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Miss V in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

My final decision

For the reasons I've explained, I'm upholding Miss V's complaint. Subject to her acceptance, MBNA Limited should now put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss V to accept or reject my decision before 30 September 2024.

James Biles
Ombudsman