

The complaint

Mrs P complains that MBNA Limited applied a default to her credit record, when she'd been told this wouldn't happen if she made a payment to her credit card accounts. She says this was agreed over the phone but MBNA hasn't provided the call recording of this conversation.

In bringing her complaint, Mrs P is represented by Mr S.

What happened

Mrs P has two credit card accounts with MBNA. She contacted it in mid 2018 when she was experiencing financial difficulties in making the payments towards her balances. At this time, MBNA agreed to suspend the fees and interest on her accounts for around six months.

However, arrears began to build up on the accounts, and at the end of 2018 MBNA issued her with a notice of default for each of them.

On Mrs P's behalf, Mr S spoke to MBNA about how she could prevent a default being applied to the accounts. He recalls being told that if she made the monthly repayments, this would stop the process. They made a payment to each account in December 2018, but MBNA still continued to default her accounts the following month.

Mr S complained on Mrs P's behalf and asked for the call recordings of his discussions with MBNA. MBNA agreed to send them but Mr S and Mrs P didn't receive them, and needed to contact MBNA again. Mr S asked MBNA to review the application of the defaults on Mrs P's accounts.

MBNA apologised for the call recordings not being sent. It put through another request for this to be prioritised, and offered Mrs P £75 for the inconvenience. However, MBNA said it felt Mrs P had been kept informed of its arrears process throughout, and had been given sufficient notice of the defaults, which it said had been applied correctly and so wouldn't be removed.

One of our investigators looked into the complaint but didn't think it should be upheld. She listened to the call recordings and said that Mr S was told that if Mrs P didn't clear the arrears on her accounts then they would default. When the two payments were made in December 2018, the investigator said that Mr S had been told this would delay the process until the end of January. Overall, the investigator thought it had been made clear on more than one occasion that if Mrs P's account arrears weren't cleared in full, her accounts would default. She was satisfied that MBNA had acted in line with the account terms and conditions, and had looked to treat Mrs P positively and sympathetically.

Mr S didn't accept the investigator's findings. He said that there was a further phone conversation when the payments were made to the account where MBNA said that the default process on Mrs P's accounts would stop if that month's payments were made. He felt the assessment of the complaint was incomplete without this call recording. He said he was

never told that it would only halt the process. He said it was frustrating that this call recording was missing as that is what Mrs P's complaint is based upon – what he was told in that call. He said this absence of evidence should be in Mrs P's favour.

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.

I do appreciate Mrs P's situation, and understand that she and Mr S looked to try to avoid her accounts defaulting.

I've listened to the provided call recordings, and while I appreciate that MBNA has not been able to locate the recording for the specific call Mr S has referred to where he made part-payments towards Mrs P's arrears, I don't think that MBNA has acted unfairly or inappropriately in its handling of her accounts.

I say this because I think MBNA made Mrs P aware of the arrears that had built up; what actions she could take to repay these and also what may happen if they weren't cleared. Letters to Mrs P explained:

“Unfortunately, you've not met the terms of your credit agreement and currently your repayments aren't enough to prevent a default from registering with the credit reference agencies. If a default is registered it will remain on your credit file for at least six years and any potential employer, car dealership or creditor who uses credit reference agencies will be able to see this information. We'll provide you with 30 days advance notice of the registration of the default unless you've already received this notice. Once a default is registered, we'll terminate your agreement and may sell your debt; this means legally selling your debt and transferring the rights to collection of the outstanding balance to another company. But if we do, we'll make sure the details of your financial circumstances and recent payments you've been making are passed to the relevant company.”

MBNA sent Mrs P notice that her accounts would default at the beginning of November 2018. However, she'd moved home before she received them.

So although I appreciate that she may not have received these particular letters; I think that the previous and ongoing communication she and Mr S were having with MBNA through this time made her aware of the arrears and that these would need to be cleared to avoid the accounts defaulting.

And Mr S spoke to MBNA in December 2018, after the notices had been issued, about how Mrs P could avoid the accounts defaulting and at this time updated her address details, which further suggests that they were aware of the situation. They then made payments to each account, but this wasn't enough to clear the arrears and no payments were made in January 2019 before MBNA applied the defaults to the accounts.

The notice of default from November 2018 said that this would be applied if the arrears were not cleared. So even though payments were made in December, this didn't fulfil the requirements to avoid the default. I don't think that MBNA should've been required to send Mrs P further notice following the partial payments, as the initial notices had set out what would happen if the arrears weren't cleared.

MBNA hasn't been able to locate the recording of the call that Mr S has said he was told that making monthly payments would stop the default process, so I can't be certain of what was said or agreed in that call. But MBNA's notes of this conversation record that Mr S was told

that making the payments would delay the accounts defaulting until the end of January 2019 - which they did.

On balance, I think it's more likely that this was how it was explained to Mr S, rather than MBNA saying the payments would completely stop the default process. I say this because all the other communications with MBNA let Mr S and Mrs P know that only clearing the arrears in full would do this.

So although I can fully appreciate Mr S's sense of frustration about the missing call recording, I think that all the other information both he and Mrs P were provided with made them aware of what would happen if the arrears weren't fully cleared. I don't think MBNA should be required to amend or remove the default status from Mrs P's credit history when this reflects how she managed her credit card accounts. MBNA has a responsibility to report accurate and up-to-date information to credit reference agencies, and I think that's what it has done here.

MBNA has previously offered Mrs P £75 to recognise that the call recordings weren't sent to her when they were first requested, and I leave it for Mrs P to contact MBNA about this should she wish to now accept this, if this offer is still available.

My final decision

My 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 27 March 2020.

Cathy Bovan
Ombudsman