

The complaint

Mr D complained when MBNA Limited registered a default on his credit card account because of arrears resulting from the impact of the global pandemic.

What happened

Mr D opened a credit card account with MBNA in February 2020. In April 2020, he contacted them to request a payment deferral. His income had been impacted as a result of the global pandemic. MBNA agreed Mr D's application for a payment deferral to cover the period from April to June 2020. But, as Mr D's financial situation hadn't improved, he applied for the payment deferral to be extended. MBNA agreed to a further payment deferral which ended in November 2020.

Mr D called MBNA in early November 2020 seeking a further payment holiday. MBNA said they'd already provided payment deferrals together with breathing space previously. They thought Mr D's financial situation appeared to be more of a long-term issue. So, they made him aware of free and impartial debt support available where he could get advice. But Mr D declined this support as he didn't want his credit file to be impacted.

In December 2020, MBNA received correspondence from a debt management company on Mr D's behalf. This included a detailed income and expenditure analysis. The debt management company offered a monthly payment, on Mr D's behalf, of £8.10.

MBNA wrote to Mr D on 17 December 2020. They said his account would be transferred to their recoveries department. They confirmed that while not contractually binding, they'd accept the payments of £8.10 offered for the time being. But they made it clear that the existing account terms were still in force and the temporary arrangement wouldn't stop a default being registered. MBNA said they'd stop any further interest and charges and send a default notice and a final arrears letter before his account was transferred. They explained that the transfer may take up to two months and, in the meantime, Mr D should advise them, should his circumstances change. MBNA were clear that Mr D's credit file would be impacted by the transfer.

In January 2021, the debt management company complained to MBNA on Mr D's behalf. They thought that the negative impact on Mr D's credit file was unfair – particularly given his previous good credit history.

MBNA responded to Mr D's complaint. They didn't think they'd done anything wrong or acted unfairly. They said they were obliged to report factual information such as payment history to the credit reference agencies. Mr D wasn't happy with MBNA's response. So, he referred his complaint to this service.

Our adjudicator didn't think MBNA had done anything wrong or acted unfairly. Mr D disagreed. He thought there'd been a lack of government help and there was a broader problem with the Financial Conduct Authority's broader regulations. So, he asked for his complaint to be passed to an ombudsman to issue a final decision.

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.

The Financial Conduct Authority (FCA) issued guidance to lenders on 2 April 2020 which explained what it expected from businesses during the exceptional circumstances arising out of the global pandemic. It provided guidance asking businesses to consider payment deferrals of up to three months under regulated credit agreements.

The FCA said their guidance applied where consumers were already experiencing or reasonably expect to experience temporary payment difficulties as a result of the pandemic. The FCA also said that *"firms should ensure that there is no negative impact on the consumer's credit file because of the payment deferral"*.

Further guidance issued by the FCA on 1 July 2020 extended these measures, and where consumers were still struggling due to the global pandemic, businesses were advised to freeze or reduce their payments for a further three months.

In Mr D's case, he applied for a payment deferral in April 2020, and this ultimately expired in November 2020. I can't see that any adverse data was reported on Mr D's credit file during that period. So, MBNA appear to have complied with all the guidance issued by the FCA. But Mr D's financial problems continued. MBNA offered support to Mr D, but he appears to have declined this as he didn't want his credit file to be adversely impacted.

Mr D then sought advice independently from a debt management company, who acted on his behalf. They assessed his financial circumstances and, with Mr D's permission, approached MBNA with this information and an offer for reduced payments. But the payments offered were less than that required under the agreement between Mr D and MBNA. So, while it appears that MBNA accepted the offer in the interim, their process meant that control of Mr D's account needed to be passed to their recoveries team. This is not unusual as a lender's recovery team is often better placed and resourced to provide support and guidance where financial problems exist. And this would often result in a default notice being issued.

The Information Commissioner's Office (ICO) were involved in drawing up the Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies. They explain what's required from a lender in these circumstances. Section three of the principles says *"If your lender does not agree a reduced or revised payment with you because the amount you offer to the lender is not acceptable, for example, a very low or token payment, the account will not be reported as an arrangement or a debt management programme negotiated by a third party. Any payments you make will be reflected in the current balance, arrears will continue to accrue, and a default may be recorded"*. This seems to be what happened in Mr D's case, and MBNA were entitled to do that. Mr D confirmed he wasn't able to make the contractual payments and MBNA confirmed the amount offered wasn't contractually binding.

So, on balance, I can't find anything to suggest that MBNA have acted unfairly or done anything wrong here. They are obliged to report what actually happened to the credit reference agencies. And that's what they've done here.

Mr D has expressed concern about ongoing government support and the regulations and guidance issued by the FCA. This service is not able to instruct either the UK Government or the FCA on matters regarding their support or guidance. But it is this service's role, as an Alternative Dispute Resolution Service (ADR), to provide mediation in the event of a dispute. So, I'm only able to consider Mr D's complaint to MBNA within the context of the guidance and rules at the time.

Having done so, I can't reasonably say that MBNA have done anything wrong or acted

unfairly in Mr D's circumstances. I appreciate Mr D will be disappointed, particular given the financial impact the global pandemic has had upon him, but it wouldn't be fair or reasonable for me to ask MBNA to do anything more here.

My final decision

For the reasons set out above, I don't uphold Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 15 February 2022.

Dave Morgan
Ombudsman