

## **The complaint**

Mr F complains MBNA Limited haven't defaulted his two credit card accounts when they should have.

## **What happened**

I issued a provisional decision setting out what'd happened, and what I thought about that. I've copied the relevant elements of this below, and they form part of this final decision.

*In 2020 Mr F entered into a Debt Arrangement Scheme (DAS) through a debt company I'll refer to as S. Under the DAS Mr F had to make regularly monthly payments to S, and they distribute this money to his various creditors. Mr F says all creditors have defaulted his accounts or closed them – apart from MBNA. Mr F says MBNA are continuing to report missed payments for one of his accounts, when he wants them to default both accounts back to when he agreed the DAS.*

*MBNA said their records show Mr F entered into a DAS in March 2020. They said when this was approved, a debt repayment programme was set on each of his accounts. They added they don't default accounts, but Mr F's credit file will show there are arrangements in place. Once the DAS has been completed, his accounts will be closed and written off.*

*Mr F asked us to look into things, saying it was the missed payments appearing on his credit file which was the biggest issue.*

*One of our Investigators considered things but thought MBNA had acted fairly.*

*Mr F didn't agree. He felt MBNA should have defaulted him and asked for an Ombudsman to consider matters. So, his complaint has been passed to me to decide.*

## **What I've provisionally 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.*

*Guidance on how the DAS is designed to operate is contained on the Account in Bankruptcy website, which I've seen Mr F kindly provided a link to.*

*There is both a debtor guide (information for Mr F) and a creditor guide (information for MBNA) and I've used these to inform my decision about whether MBNA are required to default Mr F's accounts as he's asked.*

*Focusing first on the debtor guide which lets Mr F know what to expect, this says:*

If you participate in DAS your details will be recorded on the DAS Register. This is a register which can be accessed free of charge. Creditors and credit reference agencies check this register on a regular basis and may update your credit file to reflect this information.

*And the creditor guide which tells MBNA what to do, is silent on what may be recorded on someone's credit file.*

*So, the only guidance out there for what MBNA should be doing when someone enters into a DAS says creditors may update someone's credit file – it doesn't say they will.*

*The Information Commissioner's Office (ICO) also provides some helpful guidance on these issues. They say under the heading 'Your credit file may show the following':*

**A defaulted account.** This may show on your credit reference file for **six years** from the date of the default. A default normally occurs when you have not met the terms of a credit agreement and your account is three to six months in arrears. When you repay the debt, the entry on your credit reference file should be marked as settled or satisfied.

**An arrangement to pay.** Sometimes, if you cannot make the full payment for your account, the lender may allow you to pay a different amount for a short time. This will show on your credit reference file as an arrangement to pay. The credit reference agencies may show these arrangements to pay in different ways. What the agency sent you with your credit reference file should explain how it records such arrangements.

*Both of Mr F's accounts with the CRA have a flag saying 'debt management programme' which is essentially MBNA recording the accounts as being in an arrangement to pay.*

*Pulling all of this together, I've not seen anything that requires MBNA to default Mr F's accounts. Although the ICO guidance says defaults are usually applied within three to six months of someone being in arrears, it seems Mr F didn't get to that point with MBNA on either of his accounts. So, I don't currently plan to require MBNA to apply a default to each of Mr F's accounts as he's requested. I would though expect MBNA's reporting when the account is settled to accurately reflect the plan was entered into in March 2020. If Mr F has concerns over the reporting once his plan has finished, then he can raise a new complaint regarding that.*

*That addresses the issue of the defaults, but that doesn't answer the question of whether MBNA are reporting the missed payments fairly on either account.*

*MBNA have explained all contact would go through a portal S provided – so they wouldn't have contacted Mr F directly regarding any 'missed' payments. And their evidence showed they hadn't sent any messages since the agreement was put in place. They added they're aware there will be periods where payments are late / missed due to when S pass on the payments. Overall MBNA still don't think they've done anything wrong.*

*We also spoke to S and asked if Mr F could have cleared the arrears on his account – as that's the reason MBNA gave for continuing to report missed payments. S said that defeats the point of the DAS, as this is a scheme which helps a customer pay within their affordability and the amount they can pay is split between their creditors fairly. S added if you tried to ensure one creditor received more than another this is preferential treatment which could result in a DAS being revoked.*

*S also explained MBNA would be aware of the payment schedule they used and allowances made.*

*Ultimately, I've decided I agree with S and Mr F on this point – I currently don't think MBNA reporting missed payments on either account since the DAS was entered into is fair. It fundamentally goes against the principles of any kind of debt management plan. And the ICO also provides other guidance saying people's credit files need to be an accurate*

*reflection of the way they've run the account. I've seen nothing to suggest Mr F didn't make his payment to S when he was required to. MBNA need to make allowances for this in the way they report the information on Mr F's credit file.*

*I also think MBNA should pay Mr F £100 compensation for the frustration he's experienced in getting to this point.*

## **Responses to my provisional decision**

Mr F replied saying my decision was fair and accepted it.

MBNA said they thought the way they were doing things was correct – on the basis Mr F was in arrears with the first account before entering into the plan. MBNA have focused on this being the reason they've done nothing wrong. They've also provided some evidence explaining why they think it's ok to report missed payments – given Mr F isn't meeting his contractual monthly repayment.

## **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 still don't agree MBNA are doing this correctly.

While I take their point Mr F was in arrears on one of his accounts before entered into the DAS, since then he's made every payment on time that I've seen. MBNA haven't argued with this point – so I assume they agree with it.

What I have seen on Mr F's credit file is that MBNA have reported missed payments. I don't think MBNA reporting arrears on Mr F's credit file is inaccurate – so that's fine if they want to do that. But, reporting missed payments on either account since Mr F entered into the plan isn't fair because he's made payments on time every month. I appreciate this isn't the contractual monthly payment, but I think prospective lenders could look at this and think Mr F wasn't making his debt management plan payments – and I think that ambiguity is what makes this unfair.

## **Putting things right**

I require MBNA Limited to:

- Update Mr F's credit file to show he's made all his payments on time since he entered into the DAS in 2020
- Pay him £100 compensation for the frustration caused to him

## **My final decision**

I partially uphold this complaint and require MBNA Limited to carry out the actions in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 12 April 2024.

Jon Pearce  
**Ombudsman**