

## **The complaint**

Mr W complains MBNA Limited ("MBNA") defaulted his account without giving him notice and that it wasn't clear about what was meant to happen on his account.

## **What happened**

Mr W told us following redundancy, after utilising his savings, he became unable to make some payments to his credit card with MBNA. He said he eventually called MBNA, explained this and then commenced, as promised, making payments to his account through the app. Mr W said he found, when trying to make a payment in July 2024, that he was unable to as the app was not functional. Mr W says he called MBNA about this and was told it was a service issue so he kept trying for several weeks and then called MBNA again. Mr W says at that point he was told his account had been closed, defaulted and passed to collections.

Mr W's unhappy as he considers this was done without notice and without reason as he'd been making payments. When Mr W called the complaints team to try and resolve the matter, he says he was told he didn't have a payment agreement in place and didn't call them within a month of that initial call. Mr W says he wasn't aware of that need to call MBNA within a month. And that during the call he'd clearly told them he was overseas and asked for all mail to be sent by email. Mr W complained and asked for the default to be removed as he thought it had been applied in error.

MBNA sent its Final Response ("FRL") to his complaint on 28 August 2024. It didn't uphold the complaint. In the FRL MBNA told Mr W it didn't think it had made any errors as it had reported the correct position to the credit file. MBNA listened to the call recording of the discussion with Mr W where he disclosed his financial difficulties and told him a payment plan wasn't set up that day, rather a 30 day hold was placed on his account. MBNA said this was because Mr W told them in that initial call, he hadn't discussed his finances with his other - priority - creditors at that time. MBNA said, due to this, it was unable to go through the discussions with him required to set up a payment plan at that time. MBNA said it had pointed Mr W toward Debt Management Charities but he declined. MBNA said after summarising the 30 days hold, the call handler advised Mr W he would need to get back in touch if the account was still behind on payment after the 30 days had expired, which Mr W confirmed he'd understood. MBNA said it was also discussed that it would be sending postal communication to Mr W's UK address and the only alternative to this would be to set up a letter of Authority in the UK for someone else to deal with the account and communication on his behalf whilst overseas.

Mr W disagreed with MBNA's response and referred the matter to us. Our investigator didn't uphold the complaint as she thought MBNA had acted fairly. She was satisfied from what she'd seen that MBNA provided Mr W with enough information and notice about the arrears and the potential consequences of not repaying it or making any arrangements to repay it. She said MBNA had a duty to report information to Credit Reference Agencies that was accurate so didn't ask MBNA to remove the default.

Mr W disagreed he said the complaint wasn't only about MBNA registering the default without warning but also that it was unclear about what was meant to happen in this case.

## 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.

In cases like this, where the evidence is inconclusive, I reach my decision on the balance of probabilities. That means I'll look at all the available evidence and decide what I think is most likely to have happened.

I'm aware that I've only summarised Mr W's complaint points below. And I'm not going to respond to every single point he's made. No discourtesy is intended by this. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to reach what, I think, is a fair outcome. Having considered what both parties have said and sent me, I've come to the view this isn't a complaint I can uphold. I'll explain why.

I've seen the terms and conditions on the account. They say, "*You must make at least the minimum payment each month by the payment due date shown on your monthly statement if there is a balance payable to us*". Mr W agreed to these when he opened the account so I'm satisfied he was aware of his responsibility here. I can see from the historical statements and transaction history provided by MBNA, Mr W had a direct debit set up to make the minimum monthly payments. The direct debits for December 2023, January 2024 and February 2024 were returned unpaid. So, I'm satisfied, Mr W didn't keep to the agreed terms. In fact, no payments were made until 14 May 2024, and then, on 14 June 2024. By the point the first of those was made, the account was significantly in arrears and both those payments were less than the amount required to clear the arrears. So, I'm satisfied this account had been in arrears for at least 3 months at the point MBNA decided to send the demand for payment and the default notice. Whether MBNA should have done that, I think, that turns on what was agreed in the call on 6 March 2024.

Although MBNA and Mr W agree he called on 6 March 2024 they disagree about what happened in that call. Mr W thinks a payment agreement was reached, which he says he kept to, so, it's wrong to default him. Mr W hasn't specified the detail of the agreement he says was reached in that call. He later told us during our investigation he had not been made aware he was meant to commit to a specific agreement. And, as far as he was aware, he had agreed to start making payments again and had done so. Mr W told us he thought MBNA had a responsibility to advise him completely and in detail of what he was meant to do and should have made an agreement with him.

MBNA say in that call, after Mr W told it of his financial difficulties, it agreed a 30 day hold and it was for Mr W to get in touch, after this, at the end of the 30 days if the account remained behind with payment. It says this was as Mr W told it he still had to reach agreements with other creditors, including his mortgage provider, and the hold would allow him to do this and then come back to MBNA with exact figures to establish a repayment plan or make payment.

The recording of the call is no longer available, which is unfortunate. But I have seen several references to its content documented in the information before me. Firstly, there's a contemporaneous note of the conversation in MBNA's contact notes for Mr W made on the day which records a 30 day hold *not* a payment arrangement. Then MBNA's letter to Mr W dated the following day - 7 March 2024 - recording that agreed action of a 30 day hold. Next MBNA's letter of 9 March 2024 recording the waiving of interest and advising of its implications. And finally, a separate summary of the call, completed later in complaint notes, as the complaint handler listened back to the recording of the 6 March call on 28 August

2024, as part of their investigation noting what was discussed on the day.

I can't know exactly what went on in the call but, on balance, several things satisfy me a formal agreement wasn't reached here and, instead, the account was just placed on hold for the 30 days with interest frozen, as MBNA say. Firstly, there are the four sources that I've listed above, all annotating the call consistently as agreeing a 30 day hold. In addition, I've also looked at what Mr W told us and what he did following the call. Mr W doesn't specify the terms of the agreement he believes was reached in March 2024. But to comply with the agreement he says was reached, I can see he's made payments (of two different amounts) the first over a month after the end of the breathing space on 14 May 2024 and then on 14 June 2024. The payments are for different amounts each month. I'd usually expect a payment agreement to set out an agreed affordable figure for the account holder to regularly pay for a set period of time, until a further review. So, it strikes me as unusual that different amounts were paid and in just two months over this timeframe if a payment arrangement was in place.

Guidance on defaults and their reporting is published by the Information Commissioners Office in *"Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies"*. Section 4 of that note begins by saying *"If you fall into arrears on your account, or you do not keep to the revised terms of an arrangement, a default may be recorded to show that the relationship has broken down. As a general guide, this may occur when you are 3 months in arrears, and normally by the time you are 6 months in arrears"*

Aside from those two payments in May and June 2024 no payments were made towards this account from December 2024 onwards. So, I'm satisfied MBNA could take the step to default the account in June 2024. And the information I've seen satisfies me it's followed the correct procedure when doing so. The default notice was sent on 14 June 2024 asking for payment by 2 July 2024. The payment wasn't satisfied by the required date and there's no record of Mr W getting in touch with MBNA to discuss the account.

I appreciate Mr W says he didn't receive the letter's MBNA says it sent about missed payments, arrears, the hold and the eventual demand and default notice. I don't know why that's the case. He hasn't reported a similar problem with his monthly postal statements, in fact, he confirms in his email of 12 January 2025 he received statements and could see from them his credit limit was reducing. So, he'd assumed all to be well with the account. It could be the case that Mr W's access to statements was online or via the app. But even if that was the case, having sight of the statements in whatever medium, Mr W would *also* have seen in the statement's warnings about the missed payments and the amount by which the account was in arrears each month. Whatever the reason for the non-delivery of the letters about the arrears and the eventual default, the information before me satisfies me these letters were sent. And I don't think it's fair for me to hold MBNA responsible for their non delivery. So, I'm not going to ask MBNA to remove the default.

I also looked at how MBNA treated Mr W after he made contact about the account and told it he was in difficulties, to see if the default was applied for the right reasons. Once MBNA were aware Mr W was in financial difficulty, I'd expect it to treat him positively and sympathetically. Overall, I think MBNA did that here. It granted an immediate 30 day hold on the account to allow Mr W some breathing space to speak to other priority creditors with a view to him contacting it again within the 30 days if he was unable to pay the arrears. When the decision was taken to default the account, it was three to six months in arrears and no payment plan had been agreed. Nor had there been any further contact from Mr W despite the numerous letters sent, the monthly postal statement, monthly statement SMS alerts to his mobile, alongside access to the account (which includes statements) via the app and online which would have shown the balance outstanding and the accrued arrears. So, I think, MBNA acted as it should here.

Overall, for the reasons I've given, I don't think MBNA made any mistakes when it decided to default this account or acted unfairly once it was aware Mr W was experiencing financial difficulties. So, I'm not going to uphold this complaint.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 13 May 2025.

Annabel O'Sullivan  
**Ombudsman**