

complaint

Mr F complains, after he orally agreed with MBNA Limited to make a lump sum payment in settlement of his credit card debt, MBNA failed to confirm that agreement to his satisfaction in writing. And whilst he was trying to get written confirmation it sold his debt.

Mr F also complains MBNA unfairly recorded a default on his credit file.

background

As a result of illness, Mr F was unable to work and could not make the minimum payments on his credit card with MBNA. After Mr F told MBNA about his change of circumstances it reduced the interest rate on the debt to 0% and agreed no monthly payments were required. Later Mr F contacted it and they agreed to a partial settlement of the debt provided this was received by the end of May. MBNA wrote to Mr F setting out what they had agreed.

Mr F didn't find the letter clear so he wrote to it requesting it confirm a number of points. MBNA didn't write back. Mr F then made calls to MBNA but remained unsatisfied with its response. He therefore did not make the agreed payment. As a result MBNA registered a default entry on his credit file and sold the debt.

the adjudicator's view

The adjudicator did not recommend the complaint should be upheld. She considered MBNA's letter was clear and that Mr F received further assurance when he called MBNA. She considered it was not incorrect to register a default or to sell the outstanding debt as the agreement to settle the debt had not been met.

Mr F did not agree with the adjudicator. Mr F said MBNA's letter was not clear and it was also unclear in later telephone calls. As a result he did not make the lump sum payment. He wanted:

- MBNA to repurchase the debt;
- it to provide a clear letter;
- it to correct his credit file; and
- to be allowed to make the lump sum payment he was going to make.

my first provisional decision

Based on the evidence I had at that time, I issued my first provisional decision. In that provisional decision I found:

- by reducing the interest rate to 0% and agreeing to the monthly payments stopping, MBNA responded sympathetically to Mr F when he told it of his illness;
- the letter from MBNA was not clear as it didn't make it sufficiently clear that MBNA would not pursue Mr F for the remaining debt later or sell it to a debt collection agency;
- I accepted Mr F's account of the calls and considered Mr F would have made the payment if MBNA had been more clear in its communications with him; and
- MBNA should put Mr F in the position he would have been in had he made the payment by the end of May.

MBNA responded to my first provisional decision to say, in summary, it was confident that the terms of the partial settlement were clearly explained to Mr F in the phone call of 13 May and further explained on 31 May. It also said in the call on 31 May, Mr F said his father was unwilling to lend him the money due to the effect a partial settlement would have on his credit file. It provided recordings of some of the calls.

Mr F responded by saying, in summary, MBNA is required to provide formal and unequivocal confirmation in writing that an offer to settle a debt had been accepted as full and final settlement of that debt and not as a partial repayment toward an outstanding balance.

Mr F also said MBNA hadn't provided a tape of all the calls made.

my second provisional decision

I considered carefully the new evidence and arguments and issued a second provisional decision. Having had the opportunity to listen to some of the calls I found MBNA had made clear to Mr F:

- the partial settlement would mean that Mr F would no longer be liable for the remainder of the debt;
- the partial settlement would be registered on his credit file for six years;
- payment was required before 31 May 2013 or the account would be defaulted.

The Information Commissioner's Office provides guidance about what should happen when a part payment is made to settle a debt. The guidance was updated in January 2014. But the guidance relevant at the time Mr F called MBNA says when there is a negotiated part payment to settle a debt the entry on the debtor's record *"must record the position adequately, for example, by showing no further monies are expected and the account was partially paid."* I considered, having listened to the calls, MBNA explained this reasonably well to Mr F.

I also found Mr F, having understood the effect of a partial settlement on his credit file, wasn't able to make the payment on 31 May because his father wouldn't lend him the money.

Mr F had said MBNA had a duty to provide formal and unequivocal confirmation in writing that an offer to settle a debt had been accepted as full and final settlement of that debt. I considered on the basis of all the communication between MBNA and Mr F, when the implications of a partial settlement were clear to him he wasn't able to make the payment. I therefore didn't consider it would be fair or reasonable to make an order against MBNA.

MBNA has accepted my second provisional decision and made no further comments.

Mr F hasn't accepted my second provisional decision. Much of his response to the second provisional decision repeats things he has already said.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I am satisfied that Mr F has put his case clearly on paper, and that I can fairly decide his complaint on the evidence he and MBNA have provided. I don't consider it necessary to hold an oral hearing.

I made my second provisional decision on the basis that I considered Mr F understood the effect of a partial settlement and wasn't able to make the payment on 31 May because his father wouldn't lend him the money, as making a partial settlement would affect his credit rating.

Mr F says it is completely incorrect to say his father was unwilling to lend him the money due to the effect a partial settlement would have on his credit file. But this is not what he said in the call of 31 May which I've listened to.

Mr F has asked that I listen to all the calls as he says he was given conflicting information. As I consider Mr F wasn't able to borrow the money from his father once the effect of a partial settlement had been understood, I don't consider it would be helpful to listen to any of the other calls.

Mr F has referred to Office of Fair Trading guidance and Financial Conduct Authority regulations as well as to the Lending Code. As an ombudsman I am required to consider these when making a decision. But I do not consider the regulations, guidance, or code help me to reach a conclusion on the crucial issue here. In this case, I am persuaded that Mr F wasn't able to make the payment on 31 May because he wasn't able to borrow the money from his father. I am also satisfied that MBNA explained clearly enough to Mr F what the impact of a partial settlement would be on his credit file, and that Mr F understood that.

Mr F has complained about how MBNA has handled his financial difficulties, particularly given his mental health issues. I have sympathy for Mr F. As I said in my first provisional decision I consider by reducing the interest rate to 0% and agreeing to the monthly payments stopping, MBNA responded sympathetically to Mr F. Whilst I accept Mr F would have liked to have had more time and more written communication I don't agree that overall MBNA was unsympathetic up to the point it sold the debt.

Mr F has complained that his debt was sold to a third party even though he had mental health issues and information about those issues wasn't passed on by MBNA to the third party. This wasn't part of the initial complaint and if Mr F wishes this to be considered he will need to complain separately. I make no findings on this point.

Mr F has complained about the third party which bought the debt from MBNA. As I said in my first provisional decision, if he wishes his complaints about the third party to be considered he will need to complain separately. I make no findings about the third party here, but I am satisfied that MBNA was entitled to sell the debt when it received no payments.

my final decision

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

Nicola Wood
ombudsman