

complaint

Mrs R complains MBNA Limited gave her incorrect advice regarding her payments when she enquired about lower interest rates, leading to her account defaulting.

background

Mrs R has had two credit cards with MBNA for a number of years. She said that while she is able to make payments to pay off the debt on one of the cards, the minimum payment for the second card only just covers the interest and is normally around £280-£300 per month. Mrs R said she became concerned because she could never get ahead of the payments on this second card.

Mrs R said she called MBNA on 15 January 2019 to discuss her concerns. She said she clearly explained she just needed to see if MBNA could change the card over to a better interest rate. Mrs R said MBNA asked her about her incomings and outgoings and she explained what they were either in that call or one a few days later. She said the bank did not ask her about her husband's expenses. Mrs R said she was then told she could only afford to pay £64 per month and MBNA asked if she could make that on each card. Mrs R said she explained she could pay more than that and that she would send double each month for each.

Mrs R received several letters after changing her payment saying she had underpaid and there was a balance in arrears on the second card with the higher interest rate. She said she assumed that as this was the same company one department would look at the notes and see the conversations she had had regarding interest rates. She said she had been told not to worry about the letters and had been waiting for someone to get back to her about changing to a reduced interest rate, but no one did. And every month she has paid £120+ each month on both cards.

Mrs R said she received a number of letters in April concerning the account, culminating in a default letter on 29 April to say the credit agreement had ended and demanding repayment of the whole amount on the card, over £10,000. But she said had she been given the correct advice she would have carried on making repayments and wouldn't have defaulted. She complained to MBNA. She asked them to take the default off her credit file.

In its final response MBNA did not uphold Mrs R's complaint. It said Mrs R had been given the correct information during the call on 15 January and that it had sent various letters for each account which would have accurately explained the status of her accounts at the time.

Mrs R wasn't satisfied with this response so she brought her complaint to this service. She said she made several calls to MBNA to get help with getting a reduced interest rate and it had taken from January to May for MBNA to come back to her. She said this exceeded 56 days and that at the end she had a default registered on her credit file.

The investigator thought that MBNA had acted appropriately and had tried to support Mrs R when she said she was struggling financially. Mrs R disagreed with the investigator and asked for a final decision from an ombudsman. She responded to the investigator's view in some detail which I will consider below.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I realise this will come as a disappointment to Mrs R but having done so I won't be asking MBNA to do anything further.

Firstly I want to reassure Mrs R that I have read all of her submissions. If I don't respond to a particular point this is not because I haven't carefully considered it but because I don't think I need to refer to it in order to reach what I believe is the right outcome.

MBNA has been unable to provide recordings of the phone calls with Mrs R. Mrs R believes that this is rather too convenient as it had told her she could have a copy of the call were she to request it. When we make enquiries to a business to provide information they are obliged to give it to us and of course they can only do so if the information is still available. While it would be useful to listen to the calls, they are not available now. It is the case that sometimes calls are not available. But MBNA has provided a copy of all the contact notes. And I've no reason to suspect MBNA has not been forthcoming nor is there anything to suggest information has been withheld.

Where evidence is incomplete, unclear or contradictory I must make my decision based on the balance of probability, that is, what I believe most likely happened.

Mrs R spoke to MBNA in September 2018 to discuss a missed payment and arrears. The contact notes indicate MBNA asked Mrs R whether the monthly payments were affordable and she said she was living within her overdraft. The notes say specifically Mrs R was *"unsure and advised managing but always living in her overdraft in order to meet all outgoings and feels wasn't getting anywhere after paying everything monthly."* MBNA offered to do an income and expenditure assessment for affordability.

MBNA applied breathing space on the account, where all activity is paused. There is also a note indicating it advised Mrs R her credit file may be impacted.

The contact notes record that MBNA tried to talk to Mrs R about the account on at least three occasions between October and January and she was either not available or unable to talk because of work or driving. There is no record Mrs R called MBNA back during that time. The breathing space was removed on 15 October.

I'm satisfied that by the beginning of January MBNA had become aware that Mrs R was having trouble with her repayments and had taken appropriate positive steps to help her, as I would expect it to do. While Mrs R has complained about the lack of actions from MBNA after her calls in January I think it relevant to this complaint that MBNA had already had a conversation with Mrs R about her payments and financial situation three months previously and had tried to make contact with her prior to January to discuss the situation.

Mrs R said she called MBNA on 8 January to discuss the interest rate on the card. She said it was too high and she wanted to know if the business would put her on a lower rate, thus lowering her payments.

On the contact notes MBNA said Mrs R called about her minimum payments. The notes indicate Mrs R said *"since breathing space has been removed the payments and interest is not affordable."* I am not disputing that Mrs R asked MBNA to change to a lower interest rate

on the account in this or any other phone discussion. But this specific request isn't noted on the contact notes for 8 January or any subsequent phone call.

On 10 January a further period of breathing space was agreed. The notes report "*confirm to the customer that the account will be blocked and educate the impact to the credit bureau.*" Following completion of the income and outgoings assessment on 15 January the final monthly total available for creditors was £179.31. The monthly payment including Mrs R's arrears was £419.39.

A payment of £64 per month was agreed, though Mrs R said she could afford more. But I can see why MBNA would consider Mrs R would be unable to make the contractual repayments. Mrs R has said no consideration was given to her husband's income but the cards were in Mrs R's name and it was she who was contractually obliged to make the payments, not her husband.

MBNA sent Mrs R a letter dated 16 January. It says:

"Thanks for telling us about your financial difficulties. After reviewing your income and expenditure, we can see you're unable to make the payments requested on your monthly statement.

While you are in financial difficulties, although the amount shown on your statement will continue to be due, you've offered and demonstrated you can afford to pay £64.00 per month, so you may make that payment for now.

While you're in financial difficulties, we've also reduced your interest rate to 0% per annum, and will waive late payment and over limit default fees.

Registering a default - the offered payment amount won't be enough to prevent us registering a default with the credit reference agencies, even if you continue to maintain payments at this level.

The amount shown on your monthly statement will continue to be due, and if you don't make a payment of that amount, we might take further action. However, we'll give you 30 days advance notice of this action (unless you have already received this notice)."

I'm satisfied that the letter is clear and unambiguous and Mrs R has not disputed receiving it. Not only does it confirm the payment Mrs R agreed to, it also says the interest rate would be reduced to 0%. The letter acknowledges Mrs R's financial difficulties and informs Mrs R of the consequences regarding her credit report.

Mrs R said her understanding was MBNA would get back to her about reducing the interest rate so she could start paying off the balance.

As outlined above Mrs R had a conversation about the account and late payments in September and MBNA applied breathing space to the account. So I'm satisfied that MBNA's understanding of Mrs R's difficulty then, and subsequently in January, related to whether she could afford the repayments. Under these circumstances MBNA is required to take positive steps to help customers. Perhaps there was a misunderstanding about interest rates during the call, we can never know, but the outcome of the call was confirmed in the letter sent the next day on 16 January.

Mrs R said she was told to ignore the letters and I'm not disputing Mrs R's version of events. But given the discussion from September and the calls in January when MBNA established from Mrs R's income and expenditure that she, by their calculation, couldn't afford the payments I'm afraid I think it unlikely MBNA would encourage Mrs R to ignore letters relating to the payment arrangement; especially as they explain the very real affect on her credit file. Mrs R said the girl on the phone told her she would receive letters but not to worry about them. It's possible MBNA may have tried to reassure Mrs R about the content of the letters but this does not necessarily mean they should be ignored.

Mrs R said she wasn't in financial difficulty and that she could use money from her business to pay down the card. She said MBNA had done something wrong because it took it upon itself to decide what they (meaning her and her husband) could afford without asking about her husband's income and despite arguing with MBNA that she could afford more. She said MBNA was adamant that she only needed to pay £64.00. But it's not clear to me why Mrs R didn't continue to make the full payments anyway given the consequences of missing payments outlined in the letters, if she could afford them.

I'm satisfied that following the calls in both September and January and the income and expenditure analysis, MBNA was aware that the information Mrs R provided indicated financial difficulty and it had acted appropriately; in this case to agree a lower payment and to drop the interest to 0%. This is what I would expect a responsible lender to do. But this new payment arrangement would still have an effect on a customer's credit file.

Mrs R continued to receive letters in February and March, including a default notice and a final demand. Given Mrs R's understanding that MBNA would get back to her regarding interest rates I consider that Mrs R had several opportunities to question why she was receiving these specific letters and take action to prevent a default on her account.

Mrs R has said she called MBNA on a number of occasions and asked for a manager to call her regarding the interest rates. She said she was invited to file a complaint in February which she did. But it appears she did not question the letters regarding the potential default.

I'm satisfied Mrs R ought reasonably to have known she needed to make the repayments, notwithstanding the fact she understood MBNA was trying to help her with the interest rates, because she would have been provided with a copy of the terms and conditions when she took out the cards which required her to make the minimum payments.

Mrs R said she chased MBNA for a response concerning interest rates and all it did was send letters in April to give itself more time. But I can see that these letters from April, excluding the default letter of 29 April, relate to the actual complaint Mrs R made, not about the interest rates themselves.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 29 November 2019.

Maxine Sutton
ombudsman