complaint

Miss B complains about the way MBNA Limited (MBNA) dealt with her credit card account when she was in financial difficulties. In particular she complains that MBNA registered a default on her credit file when she was still making payments and they were aware of her difficult financial situation. She also complains that MBNA sold the debt on without letting her know. So she says she wasn't told that future payments would have to be made to a different party and she had no details of whom the payments should be made to and so she continued making payments to MBNA.

She wants MBNA to remove the default from her credit file and to write off the balance on her account. She is also now being threatened with legal action by the third party who the debt was sold to and she thinks MBNA are responsible for this because they didn't give her the details to make payments to the third party. She wants the legal action to be stopped.

Miss B has raised other complaint points too but has already been advised to raise them as separate complaints rather than dealing with them within this complaint. So for the purposes of this decision, I've only considered the above mentioned points.

background

I issued a provisional decision in this matter in March 2016, a copy of which is attached and forms part of my final decision, explaining why I intended to uphold Miss B's complaint in part.

I asked both MBNA and Miss B to provide me with any further comments and evidence they would like me to consider before I issued a final decision.

I haven't heard anything further from Miss B. But MBNA have provided further comments and evidence for me to consider. I've considered these below.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Neither MBNA nor Miss B have added anything further to my findings about the financial difficulties and the default complaint points. So in relation to these issues, my findings remain the same as they were in my provisional decision.

The further comments and evidence from MBNA relate to the sale of the debt. Having considered the further comments and evidence provided by MBNA, I still think Miss B's complaint should be upheld. I will now explain why.

In my provisional decision, I said that I didn't think MBNA had complied with the lending code. I mistakenly referred to para 236, it should read para 237. I said this because I thought MBNA should've let Miss B know about the sale of the debt rather than relying on the third party (debt purchaser) to do so. MBNA replied and said they did comply with the code. In support of this, MBNA sent an extract of the guidance letter relating to the Lending Code. This guidance letter says that subscribers (in this case MBNA) can demonstrate compliance with the code by adopting one of two approaches.

The second approach involves, following the sale of the debt, the debt purchaser immediately sending a combined “goodbye/hello” letter to the customer. The letter is sent by a debt purchaser on behalf of the subscriber using the subscriber’s approved letterhead. It then goes on to say what information the letter should contain. It says the debt purchaser shouldn’t start collections activity until the customer might reasonably have received the letter. MBNA say they demonstrated compliance with the code by adopting this approach.

I appreciate that MBNA did have a procedure in place whereby the debt purchaser would send out the notice of sale letter on their behalf on the approved letterhead. And I now accept, based on the guidance letter, that under the code MBNA didn’t have to send the letter themselves. But I still don’t think this means that they demonstrated compliance with the code in the particular circumstances of this case. This is because they can’t evidence that the second approach was correctly followed. I say this because the letter wasn’t sent out *immediately* and it appears to me collections activity did begin before Miss B would reasonably have received the letter.

The letter wasn’t sent out until over three weeks after the debt had been sold on. And I can’t see from the account notes that the debt purchaser was advised that Miss B was no longer being represented. The notes say that an email *will* be sent to the third party (debt purchaser) to inform them of this. But there is nothing further to say that such an email was sent. And the debt purchaser has confirmed that they didn’t receive this information. So even after three weeks, it wasn’t sent to Miss B as it should’ve been.

As mentioned in my provisional decision, the purpose of para 237 is that a customer doesn’t “experience collections activity from the party to whom the debt has been passed or sold without having received prior notification from the subscriber of the transfer”. But this is what happened in this case.

I appreciate that further delays were caused by the mistakes made by the debt purchaser and that they too had obligations of their own relating to the notice of assignment. But Miss B wouldn’t have been in the position that she was in if things had happened as they should’ve from when the debt was sold on had the approach been followed as it should’ve been. And from what I understand of the code, the subscriber, in this case MBNA, is still ultimately responsible for satisfying the obligations under the code – whether they do that themselves or through the debt purchaser. It is up to MBNA if they want to, to take up the things that went wrong with the debt purchaser.

And anyway, even aside from the provisions of the lending code and the guidance letter and my interpretation of them, I think the fair thing for MBNA to do would’ve been to ensure that Miss B was aware that the debt had been sold on as soon as it was.

I note that MBNA say that they only received three payments from Miss B after the debt was sold on. They say this raises the question that if Miss B wasn’t aware of the sale of the debt, then why didn’t she continue making the payments to them. But by the same token, I think MBNA should’ve realised that it was unlikely that Miss B was aware of the sale of the debt because they say they received a payment from her even six months after the debt had been sold on.

So overall, based on everything I’ve seen, I uphold Miss B’s complaint..

my final decision

I uphold Miss B's complaint against MBNA Limited and require them to pay Miss B £300 for the distress and inconvenience caused her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 11 May 2016.

Navneet Sher
ombudsman

copy of provisional decision

complaint

Miss B complains about the way MBNA Limited (MBNA) dealt with her credit card account when she was in financial difficulties. In particular she complains that MBNA registered a default on her credit file when she was still making payments and they were aware of her difficult financial situation. She also complains that MBNA sold the debt on without letting her know. So she says she wasn't told that

future payments would have to be made to a different party and she had no details of who the payments should be made to and so she continued making payments to MBNA.

She wants MBNA to remove the default from her credit file and to write off the balance on her account. She is also now being threatened with legal action by the third party who the debt was sold to and she thinks MBNA are responsible for this because they didn't give her the details to make payments to the third party. She wants the legal action to be stopped.

Miss B has raised other complaint points too but has already been advised to raise them as separate complaints rather than dealing with them within this complaint. So for the purposes of this decision, I've only considered the above mentioned points.

background

Miss B had a credit card account with MBNA. During 2011 Miss B contacted MBNA to let them know that she was in financial difficulties and couldn't meet the minimum monthly repayment.

In response, MBNA reviewed Miss B's income and expenditure. It was clear from this that Miss B was unable to meet the required minimum monthly payments on her account. In order to help Miss B, MBNA reduced the interest rate to 0% and waived all future late, overlimit default fees and returned payment charges. As Miss B was unable to meet the required monthly payments, Miss B's account fell into arrears and eventually her account was defaulted.

MBNA say that in March 2013 they sent out a default notice to Miss B and then a termination letter was sent out in May 2013 which explained that a default had been registered and that MBNA may sell the debt on. In June 2013 the debt was sold on to a third party and MBNA say Miss B was informed of this by letter.

Miss B says that her account shouldn't have been defaulted as she was making payments and MBNA were aware of her difficult personal circumstances. She also says she made efforts to try and reduce the balance on her account by making a larger payment when she could. She also says that she never received the letter telling her that the debt was to be sold to a third party. As a result of this she says she hasn't been making payments to them and they are now threatening her with legal action.

Our adjudicator doesn't think Miss B's complaint should be upheld because he thinks that MBNA did send the necessary letters to Miss B regarding the default and the debt being sold on and tried to help her by stopping the interest and default charges on her account.

Miss B didn't agree with our adjudicator and the complaint has been passed to me to decide.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

financial difficulties

The first thing for me to consider is whether MBNA did enough to help Miss B while she was going through financial difficulties. According to industry guidance, MBNA should deal with consumers with financial difficulties in a positive and sympathetic way.

I think MBNA dealt with Miss B positively and sympathetically by considering Miss B's income and expenditure and then freezing the interest and cancelling the default fees and other fees on her account. During this time, Miss B paid less than the required contractual minimum monthly payment. I

can also see that MBNA tried to help Miss B for a relatively long period of time before registering a default.

So I think they did enough to help Miss B during this time.

default

The next step for me to think about is whether MBNA made Miss B aware that her account could still be defaulted even though they had discussed the above. In support of this MBNA have given us a copy of the letter they say they sent to Miss B following the review of her income and expenditure in 2011. From this letter I can see that MBNA confirmed that they had frozen the interest on her account and wouldn't be charging her default and over-limit fees. But they explained to Miss B that her repayment offer wasn't sufficient to prevent her account being defaulted. They also informed her that they would give her 30 days' notice if they were going to default her account.

The following year Miss B sought help from a third party regarding her debt and agreed to making a relatively small amount of repayments per month. Again MBNA have given us a copy of a letter they sent out to Miss B. This letter explains to Miss B that MBNA will freeze the interest on her account and waive fees. But it also says that Miss B's repayment offer isn't sufficient to prevent her account being defaulted. And again it says MBNA will give her 30 days' notice if they are looking to register a default.

MBNA have given us copies of their account notes. And from these I can see that a default notice was sent to Miss B in March 2013. I've seen a template of the type of notice that was sent to Miss B. This notice allows Miss B 30 days in order to try and repay the debt or else they will register a default. Following on from this MBNA say a default was registered in April 2013.

I appreciate what Miss B says about not knowing that the minimum monthly payment was set at a higher amount than she was aware of. But given that Miss B says that she wouldn't have been able to afford that amount, means that her account would've still been in arrears and eventually defaulted. So from everything I've seen I think MBNA followed the correct procedure for registering a default. As I can't say that it was unfair for MBNA to register a default, I won't be asking MBNA to remove it from the credit file.

debt sold on/threat of legal action

Miss B also complains that she wasn't told that her debt was sold on. As a result she says she wasn't aware that she had to make payments to a third party and so continued making payments to MBNA. The third party are now threatening legal action for non-payment of the debt.

As a starting point, I've looked at MBNA's terms and conditions. These allow for the debt to be sold on.

I can also see that the letter sent with the default notice mentions that once the agreement is terminated, MBNA may sell the debt on. MBNA have also given us a template of the termination of agreement letter which again says they may sell the debt on (but this letter also says that Miss B will be kept informed of any further action).

So I can see that Miss B would've been aware that her debt *could* be sold on but when it actually came to selling the debt on, I don't think she was informed of the actual transfer in the way that she should've been. I will now explain why.

The lending code at para 236 says:

Customers should be advised before or at the time their debt is passed or sold to a third party by a subscriber. The intended outcome of this provision is that a customer should not experience

collections activity from the party to whom the debt has been passed or sold without having received prior notification from the subscriber of the transfer.

MBNA have told us that it was the third party that would've sent Miss B a letter informing her of the sale along with a welcome letter. So I don't think MBNA have complied with the lending code because, as I understand it, the code requires MBNA to inform Miss B of the transfer. And even aside from the code, I think it would be fair to expect MBNA to inform Miss B that her debt was being sold on and who it was to be sold to.

I appreciate that the notice of sale that would've been sent out by the third party would've appeared to have been from MBNA, but the problem with MBNA not sending out the letter themselves is that they aren't able to ensure that the letter was sent out as it should've been. And as it was sent out with the welcome letter from the third party, I don't think it counts as *prior notification* anyway.
I can see from MBNA's system notes that they were aware that Miss B was no longer being represented and that Miss B needed to be contacted directly. The notes say that an email will be forwarded to the third party to let them know. But I can't see whether or not it was.

We have contacted the third party and they say they weren't aware that the representative was no longer dealing with Miss B. They say the notice of sale was sent to the representative. But I can see that even this was over 10 days after the third party say the debt was sold on to them and over three weeks after MBNA's system says the debt was sold on. The third party say this letter came back as "return to sender", this is because they say they mistakenly entered an incorrect address for the representative. And they say the account was then not investigated for two years.

So it appears that the third party are also responsible for the delays caused as if they had written to the correct address then they would've found out sooner that the representative no longer represented Miss B. And I've taken this into account when considering the amount of compensation that MBNA should pay. The third party say they have now sent Miss B the notice of sale. I understand that the third party are now investigating this matter.

This ties in with what Miss B has been saying. She has been adamant from the start that MBNA didn't tell her about the debt being sold on to the third party. And from the information that I now have, I accept that Miss B wasn't told of the transfer to the third party by MBNA. Miss B says that the first she heard that the debt had been sold on was when the third party contacted her with the threat of legal action in 2015.

As I think MBNA didn't inform Miss B of the transfer as they should've done, I think MBNA should pay Miss B compensation for the distress and inconvenience she has suffered as a result. Miss B has provided us with detailed testimony about her difficult personal circumstances at the time and that as MBNA didn't inform her of the sale, she continued to make payments to them instead of the third party. I think this should've alerted MBNA that maybe Miss B wasn't aware of her debt being sold on. The first Miss B heard of the debt being sold on was from a third party that she had no dealings with before. This is what I think para 236 of the lending code set out to prevent.

So overall, in the particular circumstances of this case, I think £300 is a fair amount to compensate Miss B for the distress and inconvenience caused to her by MBNA.

It follows that I intend to uphold Miss B's complaint in part.

As the debt has been sold on to a third party, Miss B should liaise with them about how to tackle the outstanding debt and threat of legal action. As I understand it, they have opened up a separate complaint for the mistakes they have made in this case.

my provisional decision

I'm proposing to uphold Miss B's complaint against MBNA Limited in part and intend to ask them to pay Miss B £300 in compensation.

I now ask both Miss B and MBNA to provide me with any further comments and evidence they would like me to consider by 4 April 2016 after which I will issue my final decision.

Navneet Sher
ombudsman