

complaint

Mr D complains that MBNA Limited did not honour the terms of a repayment arrangement that he had agreed with it. He said the bank instead wrongly sold his debt to a collections agency which then contacted him from overseas to chase payment, but would not confirm a verbal settlement agreement in writing. Mr D also says that after he complained the bank recalled the debt, but then assigned it to a different collections agency even though he had continued to make his regular reduced payments towards the debt. He says he has tried to obtain information from the bank under a Data Subject Access Request ("DSAR"), but the bank has been too slow in responding.

Mr D would like the bank to accept a reduced settlement figure of £3,000 from an outstanding debt of over £15,000.

background

The adjudicator did not recommend that the complaint should be upheld. She considered that even though Mr D was making regular payments towards the debt, as these were too low to ever be able to pay it off, the bank was entitled to continue recovery activities. These included referring the debt to a collections agency. She therefore did not consider the bank had acted unreasonably in seeking repayment of the debt, and defaulting the account. She did not consider that Mr D would have been able to pay a settlement amount, so was not of the view that the absence of a written agreement had caused him loss. She also considered that as Mr D had not paid the required fee when making his DSAR, the bank could not be held responsible for the resulting delay.

Mr D does not agree, saying that if he had been given a written settlement figure, he could have obtained the required funds to repay the debt from his family.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I appreciate Mr D has had a difficult experience. There are several aspects to his complaint, and I have address these in turn.

Whether the default was reasonable

In 2009, Mr D began experiencing financial difficulties. MBNA agreed to accept reduced monthly payments of £50 towards his credit card debt and suspended interest and charges on the account. Mr D did not make consistent payments under this arrangement and because the account was heavily in arrears, MBNA issued a default notice.

I can understand why Mr D was disappointed to learn that the account had been defaulted, even though he had been making some payments towards the debt. However, these were lower than the required contractual amount, and were too low for the bank to accept as a formal repayment plan. Banks will default an account where a certain level of arrears is reached, and as this had happened to Mr D's account with no indication that payments could be increased, I consider it acted reasonably.

Whether the referral to a recovery agency was reasonable

Having defaulted the account, MBNA was entitled to seek recovery of the debt by referring it to a third party agency which was then able to contact him regarding repayment. I understand informal settlement figures were discussed, but no agreement was reached, because Mr D could not afford to settle the account at the time.

That the agency operated from overseas is not something which this service can consider as it is a matter for the regulator, but in general, recovery agencies are able to contact borrowers to negotiate repayment terms.

After complaining to MBNA about the collections agency, MBNA recalled the debt but then reassigned it to a different external agency. Its decision to recall the debt was discretionary and it was entitled to refer it elsewhere. Mr D received a letter from the new agency in early 2012, giving him information about repayment arrangements.

I consider that the bank acted reasonably in how it handled the debt. There was no formal repayment arrangement in place and it was entitled to appoint agencies to negotiate new repayment terms to recover the debt. I realise Mr D would have preferred to deal directly with the bank, but as his account had been defaulted this would no longer be the case as set out in the account terms and conditions.

Settlement

Mr D has said that the first collections agency refused to confirm a settlement offer of £3,000 in writing. However, as he has also said he would not have been able to afford this at the time, I cannot conclude that he has suffered financial loss as a result. I understand he would like this offer to become available again, but as it would represent a reduction in the debt from more than £15,000 to £3,000, this would be a substantial concession by the bank and not something I could order. Mr D is able to discuss possible settlement figures with the current collections agency if he wishes.

DSAR

MBNA has shown that Mr D did not pay the required £10 DSAR fee, meaning his request was not processed. I therefore cannot conclude that any delay was the bank's fault.

my final decision

For the reasons set out above, my final decision is that I do not uphold this complaint.

Catherine Wolthuizen
ombudsman