

## **Complaint**

Mr K complains that MBNA Limited took too long to apply a default after he wasn't able to maintain the full payments to his credit card.

## **Background**

The background to this complaint and my initial conclusions were set out in my provisional decision – a copy of which is attached and forms part of this final decision.

In my provisional decision I explained why I thought Mr K's complaint should be upheld and what MBNA should do to resolve matters. I said I intended to tell MBNA to back date the default of Mr K's credit card to February 2016. I invited Mr K and MBNA to send me any additional information or comments they wanted me to consider.

Mr K didn't provide any new information. MBNA responded to say it didn't agree with my intention to uphold this complaint. MBNA said Mr K had a surplus monthly income of £867 which should have meant his payment arrangement of £116.56 was affordable. MBNA also provided some additional information about how arrears are calculated and explained it remained of the view that Mr K's default was correctly registered on 30 September 2016.

## **My findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've also thought about all of the additional points MBNA has made.

In my provisional decision I said that I thought it should have been reasonably clear at an earlier stage that Mr K's situation was unlikely to improve to the point where he could avoid a default. I thought the point that MBNA should have seen its relationship with Mr K had broken down was three months after it received information about his income and outgoings from a debt advice service. I explained that I thought the fairest point for the default to be registered was February 2016, not September 2016.

MBNA responded to say it didn't agree. MBNA said that Mr K's surplus income was £867 a month which, when compared against the reduced payment of £116.56, was reasonable. MBNA also says that information was provided by the third party debt advice service so it didn't contact Mr K directly. But the evidence I've seen from the debt advice service shows Mr K's household income had £867 surplus before any monthly payments to cover unsecured debts were taken into account. The budget planner shows two incomes were used to generate the surplus figure. That means £867 doesn't solely relate to Mr K. And, as I've said, the rest of the information provided by the debt advice service shows Mr K had monthly debt commitments that took up the remaining surplus household income.

So whilst there was a £867 surplus household income after normal living costs were covered, that wasn't sufficient to cover all the unsecured debt repayments as well. I'm satisfied that the information shows the household expenses, in addition to Mr K's unsecured debts, were not sustainable. I think that's reasonably demonstrated by the fact Mr K wasn't able to maintain payments of £116.56 in the long term which led to his credit card being defaulted.

I've also thought about the information MBNA has provided concerning how it calculates arrears. But, in line with my provisional decision, I'm satisfied the industry guidance allows some flexibility to recognise individual circumstances and that MBNA could have taken the step of applying a default to Mr K's account after it had been in arrears for three months.

Mr K says the delay in recording a default means it will remain on his credit file for longer. As a result, it will make getting credit again in the future harder. I agree that by amending the default date to February 2016 it will drop off Mr K's credit history sooner.

I've considered everything that MBNA has said in its response to my provisional decision. But I remain of the view that the fairest approach to resolve this complaint is for MBNA to back date the default to February 2016.

### **My final decision**

My decision is that I uphold this complaint and require MBNA Limited to amend the default date for Mr K's credit card to February 2016.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 5 April 2020.

Marco Manente  
**Ombudsman**

## **Copy of the provisional decision**

### **Complaint**

Mr K complains that MBNA Limited took too long to apply a default after he wasn't able to maintain the full payments to his credit card.

### **Background**

In November 2015 a debt advice charity contacted MBNA about a credit card Mr K had with it. Mr K was experiencing financial difficulties and the third party was contacting his creditors to offer reduced payments. As a result, MBNA confirmed it had suspended interest and charges on Mr K's account, that arrears would continue to accrue and his account may still default.

MBNA applied a default in September 2016. At this point Mr K's account had reached six full payments in arrears.

In 2018 Mr K complained and said he thought MBNA should have moved to default his credit card sooner as it was clear he wasn't able to afford his payments in November 2015. MBNA didn't agree as it had applied the default in line with its standard policy – after the account had built up a full six months missed payments. Mr K referred his complaint to our service.

An adjudicator looked at what had happened and asked MBNA to change the default date to November 2015 – when it was first told about Mr K's financial difficulties. MBNA didn't agree and said it had applied the default in line with its process and industry guidance. As a result, the complaint's been passed to me to make a decision.

### **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.

MBNA's told us that its standard policy is to default an account only once it's a full six months in arrears. As Mr K was making partial payments to his credit card, it extended the length of time before MBNA took that step. Whilst I agree that MBNA is able to decide what processes to follow, I think Mr K's been negatively impacted by the approach it's taken here.

I've looked at the information MBNA was given by the third party in November 2015. The information MBNA received showed the majority of Mr K's disposable income was taken up by making reduced payments to his various creditors. I agree with Mr K that it should have been reasonably clear to MBNA that unless something significant changed in his circumstances his account would almost certainly default.

I appreciate that MBNA's policy means it defaults an account only once it's a full six months in arrears. And MBNA's explained this gives customer's time to address their finances and a chance to repay their arrears. I agree that in lots of situations that's a fair approach, but not here. I think the information MBNA received made it reasonably clear that Mr K had lots of debts, none of which were being paid in full, and that there was very little disposable income. The information showed Mr K had no reasonable prospect of bringing his account up to date. As a result, I can't see that MBNA achieved anything by waiting until September 2016 to default Mr K's credit card.

MBNA said it's followed industry guidance by deciding to use the six month point to apply a default. But the guidance says business will normally default an account when it's between three and six months in arrears. It doesn't say whether that means there were three to six missed or reduced payments or whether it's been in arrears for that period. The guidance allows some flexibility for lenders to take a range of approaches. I think that reflects the fact each customer has different circumstances.

The guidance doesn't say a lender has to wait for the full six months arrears to build. However, the guidance does say a default should be used to reflect a breakdown in the relationship between borrower and lender. As a result, I think MBNA should have applied the default when it became reasonably clear that its relationship with Mr K had broken down.

The adjudicator asked MBNA to change the default date to November 2015 – when the debt advice charity got in touch on Mr K's behalf. But I wouldn't expect MBNA to immediately default Mr K's credit card. I think a period of around three months from receiving information from the debt advice charity would have been fair in this case. That would mean applying the default in February 2016 which would have given Mr K time to look at his finances and investigate whether it was realistically possible to repay what he owed. If, after that time, Mr K was still unable to meet his minimum payments or offer a plan to bring his account up to date I think MBNA should have considered defaulting the account.

Mr K says that by delaying the default to December 2016 the adverse information will remain on his credit file for longer. And that will make it harder to obtain credit in the future. I think that's a reasonable point. I agree that by extending the period before defaulting Mr K's account the default will remain on his credit file for longer and I accept that will most likely make it harder to get credit in the future. I understand that the default should reflect the borrowing history on the account but I think registering the default in February 2016 more accurately achieves that purpose.

It's up to MBNA to decide what policies it uses when customers are in arrears and when to default. But in this case, I think the time spent by waiting for the full six months arrears to build unfairly and negatively impacted Mr K. The industry guidance allows for some flexibility in the way businesses apply defaults and while there are situations where waiting for a full six months arrears to build before moving to default is fair, I haven't found that to be the case here. As a result, I intend to tell MBNA to change the date it's reported Mr K's default from September 2016 to February 2016.

### **My provisional decision**

My provisional decision is that I intend to uphold this complaint and tell MBNA Limited to amend the default date for Mr K's credit card to February 2016.

Mr K and MBNA Limited have until 25 July 2019 to send me anything further they'd like me to consider before I make my final decision.

Marco Manente  
**Ombudsman**