

complaint

Mr A complains that MBNA Limited registered a default on his credit file with no warning and even though he'd entered a debt management plan. He'd like MBNA to remove the default and allow him to enter a repayment plan to ensure that further defaults aren't recorded.

background

In February 2013 Mr A contacted MBNA to tell it he was experiencing financial difficulties. He said he wouldn't be able to keep up with his regular monthly payments. He'd contacted a debt management company, which would be in touch with MBNA. Meanwhile, he'd cancelled his direct debit to MBNA.

Between April 2013 and February 2014 the debt management company made several offers of monthly payments to MBNA on Mr A's behalf. MBNA says that it's only able to offer a formal repayment plan if the monthly payments offered are enough to clear the debt within five years. None of the payment proposals made on Mr A's behalf was enough to do this.

Between May 2013 and March 2014 MBNA sent Mr A four arrears notices. Each one included a warning that failure to pay the arrears could result in (among other things) registration of a default with credit reference agencies. MBNA's records show that it sent Mr A a notice of default on 3 February 2014. By that stage his account was in arrears by more than £1,500 and his outstanding balance was over £9,000. It gave him a date by which he needed to clear the arrears. Mr A didn't clear the arrears. MBNA defaulted his account on 31 March 2014 and registered a default with credit reference agencies.

Mr A says he wasn't told that he wasn't on a formal repayment plan. He says that if he'd been told that if he couldn't repay the debt within five years, a default would be registered against him he'd have prioritised MBNA's debt and made greater monthly payments. He also complains that when he asked MBNA why he hadn't been told about this five-year rule, it said it couldn't contact him because he was on a repayment plan. He feels that it was using rules designed to protect customers from harassment to withhold important information. And he says MBNA should send default notices by recorded delivery to make sure they reach customers.

MBNA says it was clear from Mr A's income and expenditure details that he couldn't make the minimum payments due. The amount Mr A offered to pay wasn't enough to prevent his account from defaulting. It stopped interest and fees on the account to try to help Mr A.

Our adjudicator didn't recommend that the complaint should be upheld. He said, in summary, that the letter MBNA sent Mr A in April 2013 made it clear that the payments he was making weren't enough to avoid a default being registered. He was satisfied that MBNA had sent a notice to Mr A warning him about the default. He said that the amount needed to clear the debt within five years would have been more than Mr A's total disposable income. And Mr A had other creditors. He understood that Mr A hadn't received the default notice, but he had no reason to doubt that it was sent.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I've reached the same conclusion as the adjudicator, for similar reasons.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here) I reach my decision on the balance of probabilities – that is what I consider is most likely to have happened, given the evidence that is available and the wider circumstances.

The letter MBNA sent Mr A in April 2013 said *“The repayment offer you have made will not be sufficient to prevent us registering a default with the credit reference agencies even if you continue to maintain payments at this level: however we will give you 30 days advance notice of this action (unless you have already received this notice). You can find out more about what this means to you on the enclosed FAQs sheet”*.

I’m satisfied that it would have been clear to Mr A from that letter that the payments he was making wouldn’t be enough to prevent a default being registered.

I understand Mr A’s frustration that he didn’t receive the default notice. But I’m satisfied, on balance that MBNA sent it. I know that Mr A feels strongly that MBNA should have sent the notice by recorded delivery. But I don’t find that it was at fault in not doing so. And I don’t consider that MBNA can be held responsible if it failed to reach Mr A.

I’m not convinced, in any event, that Mr A would have been able to prevent the default from being registered. I have sympathy with him about the financial difficulties that he was facing. But the minimum amount required each month by MBNA was several times the amount that Mr A offered to pay and was more than his total monthly disposable income when the repayment arrangement began. Although subsequent offers of payment were higher, they still fell far short of the minimum monthly payment needed to avoid a default. So even if MBNA had told Mr A specifically about the need for monthly payments to be enough to repay the debt within five years, I’m not satisfied that it would have changed the position.

I acknowledge that Mr A says if he’d been told how much he’d need to pay each month to prevent the default being registered, he’d have prioritised his payments to MBNA. But Mr A’s debts to other creditors were substantial. MBNA’s explained that it has to make sure all creditors are treated fairly. So it could only have accepted a monthly payment that was in proportion to Mr A’s total debt. Even allowing for the fact that Mr A’s self-employed and his disposable income fluctuates, I think it unlikely that it would have been enough to mean that a pro-rated proportion of his disposable income would have been enough to meet MBNA’s minimum monthly payment.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr A to accept or reject my decision before 20 April 2015.

Juliet Collins
ombudsman