

complaint

Mrs L complains that MBNA Limited acted unfairly by accepting payments from her and then selling the debt to a collection agency. She also complains MBNA didn't properly deal with her request under section 78 of the Consumer Credit Act 1974.

background

In January 2016, Mrs L contacted MBNA to let them know she was in financial difficulty. When she informed them of this she says they agreed to "freeze the account". Payments were made towards the debt but these weren't sufficient to prevent the account going into default on 31 August 2016. The debt was sold by MBNA to a debt collection agency on 11 October 2016. Mrs L was notified of the sale by post in letters dated 1 November 2016 from both MBNA and the debt collectors.

Mrs L says she'd originally signed the agreement in 2008 with another company, who I'll call V. Mrs L believes the agreement was transferred to MBNA at some point and says she wasn't informed of the transfer. And she feels there was a legal obligation by either MBNA or V to do so.

Mrs L's representative wrote to MBNA on 10 November 2016 making a request under s78 of the CCA asking for a copy of her original agreement. But she says the request wasn't complied with on time. MBNA says this was because they didn't believe Mrs L's representative had consent to ask for this information.

Our adjudicator upheld the complaint in part. He noted the terms and conditions allowed MBNA to sell the debt. And found MBNA informed Mrs L on several occasions they'd do this if the account defaulted. So all things considered, the adjudicator found MBNA hadn't done anything wrong.

The adjudicator explained to Mrs L that V was merely a brand of credit cards that MBNA issued. Again, he concluded MBNA didn't do anything wrong.

In terms of the s78 request, the adjudicator got further information from Mrs L which showed she'd given MBNA consent for someone to represent her. The adjudicator's opinion was that MBNA hadn't taken sufficient steps to check her representative was able to request a copy of her agreement. The adjudicator asked MBNA to pay Mrs L £150 for the distress caused by the delays.

Mrs L was unhappy with the view from the adjudicator and asked the matter to be looked at by an ombudsman.

my findings

For broadly the same reasons given by the adjudicator, I'm reaching the same decision. I'll explain why.

debt being sold

I agree that MBNA acted reasonably in selling the debt when it did. Mrs L was unable to meet the minimum repayments on the account. There is no dispute more than £8,000 was outstanding by the time the account defaulted. I appreciate Mrs L made a settlement offer of

£1,000 and £50 repayments for 12 months. But this was considered too low by MBNA. And they noted it would've taken Mrs L considerably more than 5 years to clear the debt.

When told of her financial difficulties, MBNA did freeze the interest and fees on the account but didn't offer to "freeze the account". So I feel it was entitled to continue with its collection process. And I consider MBNA let Mrs L know what would've happened if she stopped making minimum repayments. So I don't think MBNA acted unfairly by selling the debt at the time it did.

the original agreement

All the evidence shows Mrs L took out a card in V's name but this was issued by MBNA in 2008. The credit agreement signed by her is in MBNA's name. I don't think there is anything further that MBNA needs to do in this regard.

request under s 78 of the CCA

I can see MBNA had on record an updated form giving a representative permission to deal with the account. I agree with the adjudicator that under the circumstance, they should've taken steps to verify the original request was valid.

Mrs L says the documents she requested are extremely important in terms of her establishing her legal position. Our service doesn't decide the enforceability or otherwise of a debt. And Mrs L would need to consider what judgement a court would reach. But I agree £150 reflects the impact this has had on her.

In terms of the comments made by Mrs L on how we reach our decisions, as the adjudicator noted, we are an informal dispute resolution service. We take account of information from both sides before reaching a decision. We don't act as a regulator for MBNA. This is the role of the Financial Conduct Authority, who I understand Mrs L has already been in contact with.

I know this will be disappointing news for Mrs L but I hope I've explained the reasons for my decision clearly

my final decision

My final decision is to instruct MBNA Limited to pay £150 to Mrs L for the distress caused by their delays.

Under the rules of the Financial Ombudsman Service, I'm required to ask [insert anonymised name here] to accept or reject my decision before 22 March 2018.

Yolande McLeod
ombudsman