

Complaint

Mrs K complains that MBNA Limited waited too long before defaulting her credit card.

Background

The background to this complaint and my initial conclusions are 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 Mrs K's complaint should be upheld. I said MBNA had waited too long to default Mrs K's credit card and that it should back date the default to February 2016. I invited Mrs K and MBNA to provide additional comments or information they wanted me to consider before I made my final decision.

Mrs K didn't make any new points. MBNA responded to say it didn't agree with my provisional decision. MBNA said the information it obtained from the debt advice service indicated Mrs K could maintain her payments. MBNA pointed out the £188.97 payment it agreed to accept was more than the normal monthly payment while Mrs K's account was subject to a 0% promotional interest rate.

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 carefully about the points MBNA has made in response to my provisional decision.

MBNA said it only received information from the debt advice service, not Mrs K directly. MBNA said the information provided meant it couldn't contact Mrs K directly to discuss the situation. But MBNA did write to Mrs K about the arrangement. If MBNA was unwilling to contact Mrs K directly to check on her circumstances, it could have asked the debt advice service instead.

MBNA says Mrs K's payment offer was actually more than the minimum payment required in November 2015 as the 0% promotional rate was still in place. MBNA says that it doesn't consider Mrs K was in arrears until May 2016, when interest would have become payable. But that's not what MBNA told Mrs K and not what it confirmed in the correspondence it sent. In addition, the statements show Mrs K was in arrears from November 2015.

The statements show Mrs K made a token payment of £10 in November 2015. The statement says the minimum payment required the following month was £591.51. I'm satisfied that Mrs K's credit card payments weren't made in full in November 2015 and that her account was in arrears from that point.

I appreciate Mrs K was making payments of £188.97 from November 2015, but the information I've seen shows that wasn't sustainable. MBNA says the debt advice service sent information that showed Mrs K had a surplus household income of £867. But the information the debt advice service provided also gave details of Mrs K's unsecured debts.

Whilst there was a £867 surplus household income after normal living expenses were taken care of, the unsecured debts Mrs K (and her partner) had meant that figure was taken up by repayments. Mrs K's unsecured debt repayments, in addition to her household expenses, meant the £188.97 payment arrangement wasn't sustainable. I think that's reflected by the

fact Mrs K wasn't ultimately able to maintain the agreed payment and the account defaulted. I remain of the view that it was reasonably clear at an earlier point that Mrs K wouldn't be able to maintain the payment arrangement or afford to clear the arrears and debt.

In my provisional decision, I said MBNA should have taken the step of applying the default when it became reasonably clear its relationship with Mrs K had broken down. I don't think MBNA achieved anything by waiting until November 2016. I remain of the view that the industry guidance provides some flexibility and MBNA could have applied the default after Mrs K was in arrears for three months. I still think the fairest point that it could reasonably have been considered the relationship had broken down was around three months after Mrs K's account went into arrears and MBNA had received information from the debt advice service. That is February 2016 and I still think that's the fairest point to record the default date.

My final decision

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

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

Marco Manente
Ombudsman

Copy of the provisional decision

Complaint

Mrs K complains that MBNA Limited waited too long before defaulting her credit card.

Background

Mrs K had an MBNA credit card as well as various other debts. In November 2015 a debt advice charity contacted MBNA on Mrs K's behalf to let it know she was experiencing financial difficulties and couldn't afford to maintain her payments. The third party offered reduced payments towards her credit card debt, but they weren't enough to cover her minimum payment.

MBNA confirmed interest and charges would be stopped and that Mrs K's credit card debt may still be defaulted as her payments weren't enough to stop the arrears on her account increasing. MBNA took the step of applying the default at the end of November 2016.

In 2018 Mrs K complained to MBNA because of the amount of time it had taken to default her account. Mrs K says her other creditors defaulted her accounts around the time were contacted by the debt advice charity. MBNA responded but didn't agree it had made a mistake as its policy is to default an account once it's a full six months in arrears. Because Mrs K was making reduced payments it took around a year for her account to reach that stage.

Mrs K referred her complaint to this service and an adjudicator looked at it. The adjudicator thought MBNA had waited too long before applying the default and asked it to amend the date to November 2015 – the date the debt advice charity notified it of Mrs K's financial difficulties. MBNA didn't agree and said it had acted in line with its process and industry guidance. As MBNA didn't agree 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.

I can see that MBNA has a policy that it won't default an account until it reaches a full six months in arrears. In this case, the fact Mrs K was making payments of roughly half the minimum amount meant it took about a year for her the default to be applied. Whilst MBNA is free to decide how to treat customers in arrears, I think Mrs K's position has been made worse by the approach it's taken in her case.

Mrs K says MBNA should have known she wasn't in a position to start making her minimum payments again after it was contacted by the debt advice charity. I think that's a reasonable point. The information provided by the third party shows that the majority Mrs K's income was taken up by paying back debts she owed. I think it's clear that unless something significant changed for Mrs K it was very likely that a default would be applied to her credit card.

MBNA says that it doesn't default an account before it's a full six months in arrears to allow time for customers to address their arrears. And in lots of cases I can see that's a fair approach. But I think it was reasonably clear that Mrs K wasn't in that situation. MBNA

should have realised her account would most likely default. At that point, MBNA should have considered how the timing of the default would impact Mrs K.

The industry guidance says lenders will generally consider applying a default when an account is somewhere between three and six months in arrears. The guidance provides businesses with some flexibility to decide when it's most suitable to apply the default. And the purpose of a default is to show the relationship between borrower and lender has broken down. I think MBNA should have taken the step of applying the default when it became reasonably clear its relationship with Mrs K had broken down. I don't think MBNA achieved anything by waiting until November 2016.

The adjudicator recommended that MBNA amend the default date to November 2015. But I wouldn't expect MBNA to have taken the step of immediately defaulting Mrs K's credit card after the debt charity got in touch. I think a period of around three months from receiving the information from the debt advice charity would have been more reasonable. That would have given Mrs K enough time to look at her options and tell MBNA about any alternatives she found. And whilst I accept that wouldn't have put Mrs K's account behind by a full three payments, she would have been in arrears for three months. Again, I'm satisfied the industry guidance allows some flexibility in its interpretation.

Mrs K says that she's been unfairly impacted by MBNA's decision to wait 12 months to default her credit card as that information will remain on her credit file longer. She says the result of that delay is that it will make it harder for her to get credit in the future. I agree and think it's likely the delay will impact the point at which Mrs K is able to secure credit again.

Having considered everything supplied by both parties, I intend to tell MBNA to amend Mrs K's credit file to show the default being applied in February 2016 – three months after the third party got in touch in November 2015.

My provisional decision

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

Mrs 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