

complaint

Mr A complains that having agreed a repayment arrangement with MBNA Limited in 2005 to repay the outstanding balance on his credit card, and then maintained those repayments, a default should not now still be showing on his credit reference file.

background

In 2005, Mr A found that he was unable to maintain the required monthly payments on his MBNA credit card and a debt management company contacted the bank on his behalf. Having taken account of his income and expenditure form, MBNA agreed a 10 year repayment arrangement with him, and froze interest and charges. It was satisfied that as long as Mr A maintained those payments, this was not a situation requiring a default to be registered on his credit reference file.

Mr A maintained those payments until October 2009 when a different debt management company contacted MBNA on his behalf saying he could no longer do so. Although MBNA then accepted reduced payments it said it made clear that these were below the minimum it required to prevent a default, and it sent a letter to Mr A informing him of a potential default. This was followed by two further 'sums in arrears' letters some months later, and then in line with its policy, MBNA recorded a default in March 2010 once the account was six months in arrears. Mr A has subsequently had difficulty in securing credit, and he believes that because he has always paid MBNA the agreed amounts (and sometimes more) his account should either not show as being in default, or it should have been recorded as such in 2005.

Mr A also complains that two defaults show on his credit file with respect to this debt: one registered by MBNA and another by the debt collection agency it sold his debt to once the loan had been defaulted.

our adjudicator's view

The adjudicator recommended that the complaint should be upheld. He said that as MBNA knew in 2005 that Mr A was in financial difficulty, and as it was required to treat him fairly and sympathetically, it should have defaulted his account at that time instead of agreeing a 10 year plan. If this had happened, the default would have been spent six years later and would therefore now no longer show on Mr A's file.

MBNA disagreed saying, in summary, that it did not regard its relationship with Mr A as having broken down in 2005, and that in line with the guidance published by the Information Commissioner's Office (ICO) on registering defaults, it was prepared to reschedule its agreement with him as long as he was able to pay the revised minimum payments. It was only when he was no longer able to do this, that MBNA registered a default on his file having first sent him the required notification of its intention to do so.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr A and MBNA in June 2013 as set out below.

I was satisfied that when Mr A approached MBNA in 2005 about his financial difficulties, the bank took appropriate action to assist him by rescheduling his payments and agreeing a 10 year plan. I was also satisfied that it would have been potentially helpful to Mr A that a

default was not recorded on his credit file at that time, as if he had been able to maintain his revised repayments – which he did for some time – he might have avoided a default completely.

MBNA's customer records showed various telephone calls over the following years between it and either Mr A, or his debt management company, about payment difficulties and delays in making those payments. The possibility of a future default was mentioned during a number of these, and so Mr A did not appear to have been in any doubt that a default had not at that stage been registered on his file. But once Mr A was no longer able to maintain his repayments, MBNA followed its procedures and in 2010 registered a default. I considered this was a reasonable course of action for it to have taken and in line with industry guidance on the matter.

With the benefit of hindsight, Mr A would have preferred the default to have been registered in 2005, which would have meant that it would no longer have shown on his file six years later when he was seeking additional credit. But although I recognised that in the circumstances this would have been a preferable outcome for Mr A, I could not reasonably conclude that MBNA was wrong to have initially agreed a repayment arrangement in 2005, thereby potentially avoiding a default appearing on his file at all.

With respect to the two defaults recorded on Mr A's credit file, the view taken by the ombudsman service is that this is acceptable – and consistent with the ICO guidance - as long as it is clear that the details relate to the same debt ie the start date, default date, default balance etc are the same. I checked Mr A's file and the two records satisfied these requirements, with both showing Mr A's debt as satisfied as he paid off the outstanding balance some months after MBNA sold his debt to the third party.

my findings

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

In response to my findings, MBNA said it agreed with my provisional decision and had nothing further to add. But Mr A disagreed strongly, saying that he had always used the same debt management company from the outset and not changed to a different one in 2009 as I had stated in my report.

The observation that Mr A had started with one debt management company in 2005 and switched to another in 2009 had been made by MBNA. Mr A states that this is incorrect. But as this matter was not a determining factor in my provisional decision, and therefore has no bearing on it, I have not delayed matters for Mr A by investigating this issue further.

Accordingly, for the reasons set out in my provisional decision, which I have explained above, and given the responses from Mr A and MBNA, I find no reason to depart from that decision.

my final decision

My decision is that I do not uphold this complaint.

June Brown
ombudsman