

complaint

Mr A complains that MBNA Limited transferred his debt to a third party but didn't tell it about the reduced repayment agreement that he was on at that time.

background

Mr A had a credit card debt with MBNA. He was making monthly payments of more than £400 but contacted MBNA in January 2018 because he'd had a change in circumstances. It agreed to reduce his monthly payments to £240. But he contacted it again in July 2018 because he says that he'd had another change in circumstances and that monthly payments of £240 weren't sustainable for him. MBNA said that it was in the process of transferring his debt to a third party so a review of his monthly payments wasn't possible and he should pay what he could afford.

Mr A paid £40 (which he says is the amount he'd been told by a debt advice charity that he could afford to pay) but he says that when his debt was transferred to the third party it was expecting him to pay £240 each month and that missed payments and a default have been recorded on his credit file. He complained to MBNA but wasn't satisfied with its response so complained to this service.

The investigator initially said that MBNA had dealt with Mr A's complaint fairly but she then recommended that this complaint should be upheld and that she would ask MBNA to inform the third party that the agreement that Mr A was on was £40 a month. But the third party hadn't yet recorded a default on Mr A's credit file and she said that there had been no financial impact on Mr A so she wouldn't be recommending MBNA to pay him any compensation.

MBNA has asked for this complaint to be considered by an ombudsman. It says that there was no revised offer of £40 and Mr A confirmed in his August 2018 letter that he was told that it couldn't look at a new arrangement and he would have to discuss future payments with the third party but he should make payments of any amount that he could afford until then. And it says that it wrote to him and said that if he was struggling to make the agreed payments then he should still pay what he could afford and that the arrangement will be honoured by the debt buyer if he continued to meet the agreed payments. It also says that monthly payments of £40 wouldn't have been sufficient to maintain the arrangement with it and it would've defaulted the account prior to selling the debt.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr A and to MBNA on 19 September 2019. In my provisional decision I said as follows:

"Mr A had contacted MBNA about his financial difficulties in January 2018 and it wrote to him later that month to say:

"... we'll reduce your monthly repayment to £240 per month, in line with the amount you've demonstrated you can afford to pay. This means you're now on a reduced payment programme ...".

Mr A says that he contacted MBNA in July 2018 because he'd had another change in circumstances and that monthly payments of £240 weren't sustainable for him. He

says that he was told that MBNA was in the process of transferring his debt to a third party so a review of his monthly payments wasn't possible and he should pay what he could afford until his debt had been transferred – and he confirmed that in a letter to MBNA in August 2018.

MBNA replied to say:

"If you are struggling to maintain the agreed repayments then please pay what you can afford as each payment received will reduce your balance. As previously advised, MBNA reserves the right to sell customer accounts. If we choose to sell your account your arrangement will be honoured by any Debt Buyer if you continue to make your payments as you've agreed and no default will be registered. Should you not be able to keep up the agreed payments, you should contact the Debt Buyer direct to discuss any worries you have regarding the repayment of your balance".

Mr A says that he'd been advised by a debt advice charity that he could afford to pay £40 each month to MBNA. He'd paid MBNA £240 in July 2018 but then paid it £40 in August and September 2018 before his debt of £11,716.86 was transferred to the third party in October 2018. But I don't consider that MBNA agreed with him an arrangement for him to pay it £40 each month. The only arrangement that had been agreed was for him to pay £240 and then, when the debt was being transferred, it said that if he wasn't able to make the agreed payment he should pay what he could afford.

I consider that MBNA was entitled to transfer Mr A's debt to the third party and that it had responded to his financial difficulties positively and sympathetically (as it's required to do). It had agreed a reduced repayment arrangement of £240 in January 2018 and then told Mr A that he should pay what he could afford in August 2018. So when the debt was transferred to the third party I consider that the only arrangement that had been agreed was for him to make monthly payments of £240 – and that was the arrangement that transferred to the third party.

I don't consider that it was unfair or unreasonable for MBNA to say that it wouldn't review his monthly payments as his debt was being transferred to a third party. And if it had reviewed his monthly payment at that time and Mr A was only able to pay £40 I consider that it would've been appropriate for it to have defaulted his account as there would've been no reasonable prospect of him repaying his debt of more than £11,000 by monthly payments of £40.

I sympathise with Mr A for the financial difficulties that he's experiencing and for the frustration that the transfer of his debt has caused him. But I'm not persuaded that MBNA has acted unfairly or unreasonably in these circumstances. So I find that it wouldn't be fair or reasonable for me to require it to remove any adverse information that it's recorded on his credit file, to pay him any compensation or to take any other action in response to his complaint.

I suggest that Mr A contacts the third party about his monthly payments (if he hasn't already done so) and it's required to respond to any financial difficulties that he's experiencing positively and sympathetically. If he's unable to agree a repayment plan with the third party he can complain to it and, if he isn't satisfied with its response, he may be able to make a complaint to this service about the third party".

So subject to any further representations by Mr A or MBNA, my provisional decision was that I wasn't minded to uphold this complaint.

Mr A has responded to my provisional decision in detail and says, in summary, that:

- he has no issue with MBNA transferring his debt;
- he doesn't believe that it responsibly carried out any affordability check in January 2018;
- he's asked it for a copy of any income and expenditure assessment that it carried out but hasn't been provided with it;
- it refused to engage in further discussions around his payment when he contacted it in July 2018 to say that his financial difficulties had worsened;
- other financial organisations came up with reasonable affordable figures following their affordability checks on his circumstances;
- MBNA wrote to him confirming that he should pay only what he could afford (which he says at that point was £40) and that it would share that information with the third party but didn't do so and it failed to share with the third party information about his deteriorating circumstances; and
- it's wrong to say that there was no reasonable prospect of the debt being repaid.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm not persuaded that I should change my provisional decision.

MBNA's letter to Mr A in January 2018 said:

"Thank you for telling us about your financial difficulties. After reviewing your income and expenditure, we can see you're unable to make the payments requested on your monthly statement. Although the amount shown on your statement will continue to be due, we're pleased to let you know we'll reduce your monthly repayment to £240.00 per month, in line with the amount you've demonstrated you can afford to pay".

And its account notes show that an income and expenditure assessment was made in January 2018 in a call with Mr A in which he provided information about his financial position. Those notes show that his outstanding balance at that time was £13,464.86 and that he had a disposable income of £1,078 and MBNA says that, pro-rata to his other debts, he could afford to pay £240. So I consider that Mr A had provided it with information about his income and expenditure and that it did consider the affordability of his payments at that time.

When Mr A contacted it about his financial difficulties in July 2018, MBNA said that it was in the process of transferring his debt to a third party so a review of his monthly payments wasn't possible and he should pay what he could afford until his debt had been transferred – and Mr A confirmed that in a letter to MBNA in August 2018. I don't consider that it was unfair or unreasonable for MBNA to say that it wouldn't review his monthly payments as his debt was being transferred to a third party. And it said that he should pay what he could afford and that if he wasn't able to keep up the agreed payments he should contact the third party. I don't consider that there's enough evidence to show that he was told that MBNA would share information about his deteriorating circumstances with the third party.

Mr A has referred to other financial organisations responses to his financial difficulties. But his complaint is about MBNA's response to those difficulties and I'm not persuaded that other organisations responses are enough to show that MBNA's response wasn't fair or reasonable.

MBNA says that monthly payments of £40 wouldn't have been sufficient to maintain the arrangement with it and that it wouldn't have agreed a reduced repayment of £40 with Mr A but would've defaulted the account prior to selling the debt. I'm not persuaded that that would've been unfair or unreasonable.

I'm not persuaded that there's enough evidence to show MBNA has acted unfairly or unreasonably in its response to Mr A's financial difficulties or the transfer of his debt to the third party. So I find that it wouldn't be fair or reasonable for me to require it to remove any adverse information that it's recorded on his credit file, to pay him any compensation or to take any other action in response to his complaint.

my decision

For the reasons set out above, my decision is that I don't uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 January 2020.

Jarrod Hastings
ombudsman