

complaint

Mr C complains that MBNA Limited recorded a default on his credit card account and sold his debt on to a third party. He says that the debt is unenforceable and should not have been sold on because MBNA is unable to supply the original credit agreement and terms and conditions of the account.

background

Mr C took out a credit card with MBNA in 1998. Following six missed payments, MBNA issued a default notice in 2011. Mr C's debt was then sold to a third party in January 2012. Mr C says that the original application form that MBNA has provided does not have all the information that is necessary for a true credit agreement and that, as MBNA cannot provide the terms and conditions from 1998, it was not entitled to sell his debt on.

Our adjudicator did not recommend that the complaint should be upheld. She found that the default had been correctly recorded and was satisfied that the signed application form was the credit agreement for the account. She explained that the current terms and conditions for the account superseded any previous versions and that they entitled MBNA to sell the debt to a third party.

Mr C responded to say, in summary, that he did not consider that the application form was a true credit agreement signed by both parties and, therefore, the debt was not enforceable. He also wanted a refund of the costs incurred when he requested the credit agreement.

my findings

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

I have seen a copy of the signed application form and it clearly states at the top of the form that it is a "*Credit Agreement Regulated by the Consumer Credit Act 1974*". I am, therefore, satisfied that the application form is also the credit agreement. I acknowledge that Mr C says that the debt is not enforceable, as the application form does not contain all the necessary information but, as the adjudicator explained, only a court of law has the power to judge whether that is the case.

With regard to the default that MBNA recorded on the account, I acknowledge that MBNA suspended all interest and charges in November 2010. It also sent Mr C a default notice in March 2011, as no payments had been received since September 2010. At the same time a repayment plan was agreed. I find that MBNA responded positively and sympathetically to Mr C's financial difficulties and that it is obliged to ensure that his credit file is an accurate reflection of the account. I therefore do not consider that MBNA did anything wrong by recording the default.

I understand why Mr C says that he has no proof that MBNA was entitled to sell his debt to a third party, as it has been unable to provide a copy of the terms and conditions of the account from the date that he was sold the card. However, I do not find it unreasonable that MBNA cannot provide a copy of the terms and conditions from 1998, given the passage of time. As the adjudicator has explained, MBNA has provided a copy of the more recent terms and conditions, which supersede all previous versions. Section 20 entitles MBNA to sell the debt to a third party.

Finally, I acknowledge Mr C's request for a refund of the costs involved in requesting the credit agreement from MBNA and I note that MBNA has agreed to this.

my final decision

My decision is that I do not uphold this complaint.

Amanda Williams
ombudsman