

## **complaint**

Mr N makes a number of complaints about the way in which MBNA Limited managed his credit card account in 2008 and 2009. In particular he says MBNA:

- Hasn't provide him with a signed copy of its agreement with him;
- Imposed excessive charges and interest;
- Sold the debt on his card to a debt collecting company;
- Gave him inappropriate advice;
- Called him at work about his credit card debt.

He would like MBNA to clear the debt and compensate him for the upset it has caused.

## **background**

Mr N had a credit card with a limit of £15,000. By the end of 2008 he had run into financial difficulties. He provided details of his income and expenditure to MBNA in a letter dated 27 January 2009. On 30 May 2009, when the account was defaulted, it had an outstanding debt of over £15,000. MBNA sold the debt in June 2009. On two occasions in November 2012 and April 2013, Mr N asked MBNA to send him a copy of the agreement he had signed. It has provided him with copies of the terms and conditions but hasn't been able to provide a copy with his signature on it.

MBNA accepts Mr N received phone calls at work about the debt. It accepts that he would have been told that the interest rate he was paying on his credit card couldn't be reviewed until the account was paid up to date. It also accepts that it may have been suggested that he could try and reduce the debt by using another credit card with a lower interest rate to pay off some of the money he owed.

MBNA agreed that once it had evidence of Mr N's financial hardship in January 2009, it should have waived the interest and charges on the account. It has now refunded the full amount of £1,486.16 and apologised to Mr N.

The adjudicator didn't uphold the complaint. She said that Mr N had had the benefit of the spending on the credit card before he ran into financial difficulties. So she thought even if there was a legal argument that the agreement was unenforceable, it was fair and reasonable to expect Mr N to meet his obligations under the credit card agreement. She suggested that Mr N should take up matters such as his complaint that MBNA had failed to provide copies of the credit agreement within the time allowed under section 78 of the Consumer Credit Act 1974 with the Information Commissioner's Office.

Mr N has provided detailed responses to the adjudicator's findings. In essence he remains strongly of the view that MBNA have acted in an unethical manner and has misled this service in its response to his complaints.

## **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 agree with the adjudicator and for the same reasons.

Where the evidence is incomplete, inconclusive or contradictory, as some of it is here, I reach my decision on the balance of probabilities – that is what I consider is likely to have happened taking into account the evidence that is available and the wider circumstances.

Dealing first with Mr N's complaint that he hasn't seen a copy of an agreement signed by him, he doesn't dispute having had and used the credit card. So if Mr N had had any real concerns about what the terms and conditions were and whether he was willing to agree to them, I would have expected him to raise this with MBNA before he started using the card or at least before the account was defaulted in May 2009. But Mr N didn't ask for copies of the agreement until 2012. MBNA has sent copies of the terms and conditions which I accept applied to his account. I am satisfied that MBNA has acted throughout in accordance with those terms and conditions.

I have no doubt that Mr N found the whole process of dealing with MBNA at a time when there was a large amount owing on his credit card which he couldn't pay, extremely stressful. It must have been particularly upsetting for him to receive phone calls at work about the account. But I consider that the difficult situation he found himself in was as a result of the financial problems that he had at the time, and not due to any inappropriate conduct by MBNA. This doesn't mean that Mr N didn't have some phone calls with MBNA which he found uncomfortable. But this was an almost inevitable consequence of falling into debt. I have not seen any evidence to persuade me that MBNA ever overstepped the mark or acted oppressively in contacting Mr N about the outstanding balance on his credit card or advising him how he could best take matters forward. The situation was inherently difficult and ultimately intractable. But I agree with the adjudicator that the starting point for looking at this case is that Mr N had had the benefit of the spending which gave rise to the outstanding balance on the credit card.

The essential elements of the situation are:

- From around 2008 Mr N had a credit card debt of over £12,000 which he was unable to service properly or repay;
- The extent of his financial difficulties became clear to MBNA on 29 January 2009 after it received his letter of 27 January;
- Since MBNA has refunded all the interest and charges applied to the account after that date Mr N has been put in the position he would have been if it had suspended interest and charges on 29 January 2009, as it now accepts it should have done;
- Nevertheless MBNA was entitled to take a commercial view in considering the situation long-term;
- So once there were arrears of over six months with no realistic repayment plan in place, MBNA could not be criticised for deciding to default the account;
- MBNA was further entitled, under its terms and conditions, to sell the debt to a third party. In practical terms this means Mr N has to deal with a different creditor, but the amount owed doesn't change, so overall it is unlikely that selling the debt has put Mr N at a disadvantage.

The remit of this service is to look at the way in which Mr N's account was managed by MBNA and consider whether there has been any error on its part which still needs to be put right. Mr N has raised a number of issues which fall outside that remit and which he may wish to pursue elsewhere. But I am satisfied that, insofar as MBNA failed to act in a positive and sympathetic manner when it was alerted to the real financial difficulties that Mr N had in January 2009, by reimbursing the interest and other charges it has already taken the action needed to put things right.

**my final decision**

My final decision is that I do not uphold the complaint.

Melanie McDonald  
**ombudsman**