

## **complaint**

Mrs C complains MBNA Limited – the provider of her credit cards – sold her debt to a third party after she had told it she was in financial difficulty.

## **background**

Mrs C had two credit card accounts with MBNA. Unfortunately Mrs C is in financial difficulties. She contacted MBNA to explain this. An income and expenditure form was completed and MBNA concluded that Mrs C could only afford to pay £19 towards one account and £6 towards the other. All fees and interest were stopped. MBNA explained to Mrs C that making the payments wouldn't stop a default being reported to credit reference agencies.

MBNA's system notes show it sent Mrs C a Notice of Default in June 2018 for both accounts. The accounts subsequently went into default and MBNA sold the debt to a third party soon after.

The adjudicator didn't recommend the complaint be upheld. In her view: MBNA placed a default on the account in line with the Information Commissioner's Office guidance; was positive and sympathetic to Mrs C's financial difficulties because it stopped interest and charges on the account; and was entitled to sell the debt under the terms and conditions of the accounts.

Mrs C disagreed. She didn't understand why the adjudicator had said a payment plan wasn't agreed. She also felt extremely unhappy that when MBNA sold her debt to a third party it failed to tell that third party of her financial difficulties. She said this was a flagrant breach of its recovery action letter. When she complained to the purchaser of the debt she said it immediately recorded her as vulnerable and advised her of organisations where she could seek help. Having obtained that help she subsequently wrote to MBNA and asked it to write off the debt.

Following the comment about MBNA not advising the third party of Mrs C's difficulties the adjudicator contacted MBNA. MBNA said that it didn't send specific information regarding individual accounts as they sell accounts in batches of accounts in similar circumstances.

The adjudicator issued a second view. In this she said that MBNA's January 2018 letter - following Mrs C's contact with it about her financial difficulties - states maintaining the level of payments it had assessed she could afford would not be sufficient to prevent a default being registered on her credit card, which differs from the position that would be the case where Mrs C was on a payment plan. The Notice of Default also states MBNA may sell the debt to an external company even if Mrs C continues to make reduced payments. Therefore she couldn't see the business has done anything wrong.

She felt the third party would have known Mrs C was in financial difficulty as her account was sold with others that weren't able to go on a formal plan.

She didn't think she should determine whether MBNA had treated Mrs C positively and sympathetically by comparing its conduct with the third parties' conduct mentioned by Mrs C.

## my 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 understand why Mrs C feels let down here. I think she felt that she had made an arrangement with MBNA and that if she stuck to that arrangement her account wouldn't be defaulted or sold off.

But equally I can see why MBNA doesn't think it did anything wrong. It obtained her income and expenditure and concluded she couldn't afford to enter into a formal arrangement as the payments she could afford weren't of a level acceptable to it. It feels it explained this to her and that making the payments wouldn't be enough to stop a default being recorded. It agreed to reduce the interest to 0% and waive fees.

I think it would have been helpful if MBNA had provided Mrs C with details of bodies which can provide free advice to people in financial difficulties in the January 2018 letter particularly as we now know she didn't understand that letter. I asked MBNA about this and it has provided me with evidence that it did tell Mrs C about free debt advice in other earlier letters. Whilst it would have been preferable to repeat this information again I think – because it had been provided in December 2017 – then I shouldn't draw any adverse conclusion from it not being repeated in the January 2018 letter.

I think that the January letters regarding the reduced payments were sufficiently clear that making the payments wouldn't stop a default. Therefore I didn't feel Mrs C had been misled by MBNA. Even though I appreciate Mrs C did think she had agreed a payment plan.

I think MBNA was entitled to record a default on the account as she hadn't been making the monthly *contractual* payments even though she had been paying what it had concluded she could afford. I also think it was entitled to sell the debt to a third party. And given it sells debts in similar batches then it didn't need to provide specific details concerning Mrs C's difficulties to meet its commitment to her that any third party would be advised of her financial circumstances.

Finally Mrs C has compared her treatment by the third party and MBNA. My role here is to see if MBNA has treated her fairly not to carry out a comparison. I think MBNA has done enough to meet the test of being positive and sympathetic even if I think it could have done more – for example providing details of free debt management organisations in the January letters. Mrs C has said the third party has classed her as vulnerable. I think the circumstances Mrs C has faced recently do put her in a vulnerable situation. But I've not seen anything to suggest she is a vulnerable person. This isn't in any way to diminish the very difficult circumstances Mrs C has experienced which I am very sorry to hear about. And overall as I've said I think MBNA has done enough.

**my final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 6 April 2019.

Nicola Wood  
**ombudsman**