

## **complaint**

Mr B complains, in summary, that MBNA Limited acted unfairly in pursuing him for a debt and in selling the debt to a third party when it was aware that the debt was disputed.

## **background**

Mr B opened a MBNA credit card account in June 2001. The account fell into arrears and MBNA sent a notice of default to Mr B in January 2011. MBNA sold the account to a debt purchaser ("P") in January 2012. P sold the account to another debt purchaser ("D") in November 2015. Mr B complained that he'd not received compensation from MBNA in relation to a previous complaint with this service, he didn't receive the default notice from MBNA, he is unhappy that MBNA sold his debt to P as it was disputed and that MBNA had communicated with D about his debt.

The adjudicator didn't recommend that the complaint should be upheld. He said in relation to the various aspects of Mr B's complaint:

### *Non- receipt of compensation from Mr B's previous case*

The adjudicator noted that Mr B had rejected the final decision in his previous case with this service, so the decision and the compensation award weren't binding on MBNA. Notwithstanding this, MBNA had sent Mr B a cheque for £75 as a gesture of goodwill. This was more than the adjudicator could ask it to do.

### *Non receipt of a default notice*

The adjudicator had seen MBNA's system notes which showed that it had sent Mr B a default notice on 10 January 2011. He noted that Mr B hadn't received the notice, but didn't think that this would have changed what happened.

### *Sale of debt*

The adjudicator said that MBNA had the right to transfer the debt under Mr B's agreement terms. He noted that Mr B disputed the debt, but couldn't see any reason why MBNA shouldn't sell the debt on to recoup its losses.

### *MBNA's communication with D*

The adjudicator didn't think it was unreasonable for MBNA to answer D's queries in relation to the disputes raised by Mr B. He explained that if Mr B thought that MBNA had breached the Data Protection Act, he should raise this with the Information Commissioner's Office ("ICO").

Mr B disagreed and responded to say, in summary, that the adjudicator hadn't taken legal requirements into account with regard to transferring data and the sale of the debt. Mr B said that the debt shouldn't have been sold whilst there was a dispute about it, and the contract was invalidated due to MBNA's actions. Mr B also asked what proof the adjudicator had to show the default notice was sent and received by him.

## **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 note that Mr B said that the adjudicator hadn't taken into account the laws relevant to his complaint and he has provided us with numerous references to the laws he believes are applicable. But, we offer an informal dispute resolution service. Although we do take account of applicable law, regulations and good industry practice, we also consider the evidence we've received from the parties, and the overall facts and circumstances of the complaint to arrive at what we think is a fair and reasonable outcome for the particular situation.

I've considered the various aspects of Mr B's complaint as set out below.

*Non- receipt of compensation from Mr B's previous case*

I can see that the adjudicator provided Mr B with evidence that he had rejected the final decision in his previous case. Because Mr B did this, the decision and the compensation award weren't binding on MBNA. In any event, I can also see that MBNA sent Mr B a cheque for £75 as a gesture of goodwill, although Mr B has chosen not to bank this. I can't see that MBNA has acted unfairly here.

*Non receipt of a default notice*

I have seen copies of most of Mr B's account statements in 2010 and 2011. I can see that from May 2010, Mr B ceased to make the required monthly minimum payment shown in his statements. I have seen MBNA's account notes and can see that MBNA spoke to Mr B in July 2010 about the arrears on his account. His account balance at the time was £4,530.05, but he also had debts with other creditors. His debts amounted to over £17,000. During the call, Mr B offered a monthly payment of £32.97. But, this wasn't enough for MBNA to implement a formal repayment programme. Nevertheless, it agreed to assist Mr B by waiving all interest charges and default fees in recognition of his financial difficulties. MBNA's system notes also showed that it had sent Notices of Sums in Arrear to Mr B in July, September and November 2010. The notes also show a Notice of Default was sent to Mr B on 10 January 2011. Mr B says he didn't receive the notice and that proof should be provided that the notice was sent and received by him.

I can see why MBNA sent a default notice to Mr B in January 2011. He'd missed his minimum payments since May 2010. And Mr B must have known he'd missed these payments, but he didn't bring his account up to date. In the circumstances, I don't think I can say that Mr B's account was unfairly defaulted. Mr B said that he didn't receive the default notice. I cannot now say why he didn't receive it. I asked the adjudicator to check with Mr B where he was living in January 2011 and I note that Mr B was living at the address MBNA had for him when the notice was sent. So, as the letter was correctly addressed, I don't see why it might not have been delivered to Mr B. Moreover, I also don't think that Mr B would have been able to clear the debt if he'd received the default notice in view of his monthly disposable income and his other debts. I consider it to be more likely than not that the account would've still been defaulted if Mr B had received the default notice.

Mr B has asked for proof that the default notice was sent and received by him. I've seen MBNA's system records which show that the default notice was sent to Mr B's correct address on 10 January 2011. I've no reason to believe that MBNA's computer system doesn't accurately record the letters that are sent to its customers. Mr B believes that proof must be produced to show that the letter was sent and received. But, I've not seen anything in the Consumer Credit Act 1974 ("CCA") which requires a creditor to prove that a customer has received the default notice. So, overall, I don't think that MBNA has acted unreasonably here.

### *Sale of debt*

I note that MBNA sold the debt to P in January 2012. I can see that MBNA's agreement terms allowed MBNA to transfer customers' accounts and to transfer data to any person to whom it transferred its rights and obligations. In an assignment, the rights and duties of the original creditor (here MBNA) are passed to the debt purchaser. I note that Mr B said in an email in September 2012 that he disputed the amount of the debt. But, that was after his account was sold. I asked MBNA if it had any record of Mr B disputing the amount of the debt. It said that there was no record in its account notes that the debt amount was disputed prior to it being sold in January 2012.

I also note that Mr B said that his contract with MBNA was void as it had mis-sold him PPI. So it shouldn't have sold his account to P. But, I can see that MBNA agreed to pay Mr B compensation of £4,149.88 in settlement of his PPI dispute in July 2011 before the sale. I note that this amount included a refund of all his premiums, interest associated with those premiums and a further 8% interest on the award. I can't see that he responded to this letter to dispute the amount.

I also note that Mr B said that he was claiming around £9,000 for the PPI mis-sale and he thought that the charges which were applied to his account as a result of the PPI transactions should have been written off. I asked MBNA about this and it said it was unable to find any evidence of Mr B disputing any charges which were added to his account due to PPI premiums being applied to his account. It also said that this point had never been raised previously as a complaint.

I can also see that there was a dispute about a CIFAS entry which Mr B had raised with this service before the sale. But, I can't see that it would have been reasonable for the sale of the debt not to have occurred in view of the nature of that dispute.

And whilst I can see that Mr B believes that his agreement with MBNA was void, I am not persuaded that he is necessarily right. However, it is not for me to determine whether or not this debt is enforceable at law – that is for the courts to decide. We have no power to declare an agreement as legally enforceable or otherwise.

I also note that Mr B said that MBNA was at fault as it didn't send him a notice of assignment of the debt to P. But, I note that section 82A of the CCA says that the debt purchaser should provide a notice of assignment. And I've seen a copy of the notice of assignment sent by P to Mr B on 25 January 2012. MBNA said that its account notes indicated that Mr B was unhappy that it couldn't update his address with it when he called it on 1 February 2012 as his debt had already been sold. Nevertheless, MBNA spoke to P that day so that they could update the address they held for Mr B. MBNA said that the content of its conversation with Mr B on 1 February 2012 suggested that Mr B was aware of the debt sale at that time. And I can't see that MBNA acted inappropriately in updating P with Mr B's correct address.

### *MBNA's communication with D*

In relation to Mr B's concerns about MBNA not complying with the Data Protection Act, I agree with the adjudicator that it would be more appropriate for Mr B to raise this with the ICO.

Overall, I think it's clear that Mr B has very strong feelings about MBNA's actions, and I appreciate he will be very disappointed with the decision I have come to here. But, for the

reasons explained, I don't think I can uphold this complaint. Mr B may wish to continue his dispute with MBNA, but if he does, he will need to do so through other means as this decision represents the last stage in our process.

**my final decision**

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 8 May 2017.

Roslyn Rawson  
**ombudsman**