

complaint

Ms Q complains that MBNA Limited wrongly pursued her for repayment of a credit card debt and sold it to a third party collection agency when it had no right to do so. She says the debt is unenforceable as MBNA has been unable to provide her with the signed credit agreement and terms and conditions.

background

In September 2008, Ms Q's solicitor wrote to MBNA asking it to provide the signed credit agreement and terms and conditions for her credit card account. The outstanding balance on the card at the time was £8,000. MBNA was unable to meet this request and in April 2009, Ms Q responded that the credit agreement was unenforceable and she stopped making repayments towards the debt. In December 2009, MBNA sold the debt, which by then had an outstanding balance of over £10,000.

The adjudicator did not recommend that the complaint should be upheld. He considered that as Ms Q did not dispute taking out the credit card and as she had spent the finance available to her, she was responsible for repaying the debt. He noted that this service is not a court, and questions on enforceability of contract did not affect his assessment of what was fair and reasonable in this complaint.

Ms Q does not agree, saying he had not undertaken a sufficiently thorough investigation and should not be able to arrive at a different outcome to a court.

my findings

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

This service is not a court, and our concern is to decide what is a fair and reasonable outcome of a complaint. Legal questions regarding enforceability of a contract will not necessarily be relevant to our consideration of a complaint.

Ms Q does not dispute that she applied for the credit card, nor that she had the benefit of the money which was made available to her. On this basis, we would generally consider that it is fair and reasonable to expect the borrower to repay the debt. In this case, I do not see any reason why Ms Q should not repay the money she has borrowed as she has had the benefit of it.

I therefore consider that MBNA acted reasonably in seeking repayment, and that it was entitled to sell the debt to a third party collections agency.

I appreciate this will be a disappointing outcome for Ms Q, but she is able to take her complaint to a court if she wishes it to consider the enforceability of her credit agreement with MBNA.

my final decision

For the reasons set out above, my final decision is that I do not uphold this complaint.

Catherine Wolthuisen
ombudsman