

complaint

Ms W complains that MBNA Limited has failed to treat her positively and sympathetically since we helped resolve a complaint between them in 2009.

background

In 2008 Ms W brought a complaint to this service about the money she owed on her MBNA credit card. In July 2009 an ombudsman considered the complaint and decided, in summary, that:

- MBNA sold Ms W's debt to a third party despite knowing that she had a complaint with this service. It should not have done so.
- MBNA must accept £5,060 in full and final settlement of Ms W's debt
- MBNA could choose whether or not to buy back the debt from the third party. But, either way it remained MBNA's responsibility to agree with Ms W how the debt would be repaid. And Ms W could bring a new complaint if MBNA did not treat her fairly during those negotiations.

Ms W accepted the ombudsman's decision and MBNA wrote to her shortly after receiving her acceptance. The letter confirmed Ms W had agreed to pay £5,060 in partial settlement against her total debt of £10,275.59 and told her she must pay the money within 30 days.

Ms W says she could not afford to repay the debt in one lump sum and asked MBNA if she could set up a monthly repayment plan. She says MBNA refused.

MBNA says it chose not to buy back the debt from the third party. Its records show Ms W did not contact it in the way she describes and it is no longer prepared to accept £5,060 in full and final settlement of the debt.

Our adjudicator recommended the complaint should be upheld. He did not consider MBNA could ignore the previous ombudsman's decision simply because of the time that had passed since it was issued. He said MBNA should continue to accept £5,060 in partial settlement of Ms W's debt and allow her to repay this amount in a way that suited her financial situation. MBNA did not accept the adjudicator's findings.

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 accept that MBNA wrote to Ms W after she accepted the previous ombudsman's final decision. But that letter gave her only one option – to repay the £5,060 owed in a lump sum within 30 days. And I have no reason to doubt that Ms W did not have the money available to do so.

I cannot be certain what attempts Ms W made to come to an arrangement to repay the debt. MBNA's records may not show that Ms W contacted it but does not appear to have checked with the third party that now owns the debt to see what, if any, contact Ms W made. But what is clear is that MBNA little, if any, efforts to come to a mutually acceptable arrangement.

MBNA seems to have sent only one letter to Ms W in four years. And, even now, MBNA says Ms W must contact the third party to discuss her repayment proposals, despite the ombudsman having instructed that repayment must be negotiated between Ms W and MBNA.

We expect all lenders to treat positively and sympathetically any individual who is experiencing financial difficulties. And the lender will be the more experienced party when it comes to discussing debts and repayment plans. With that in mind, we expect lenders to be proactive in their communications with borrowers in order to obtain whatever information necessary to assess their financial situation and come to a mutually acceptable repayment plan. Having said that, I accept the lender cannot resolve the situation without the borrower's co-operation.

Overall, I am not persuaded MBNA treated Ms W as it should have in negotiating repayment of the debt following the previous ombudsman's decision.

my final decision

My final decision is that MBNA Limited must still accept £5,060 in settlement of Ms W's debt.

I urge both parties to make reasonable efforts now to come to a mutually acceptable repayment arrangement.

Ruth Lewis
ombudsman

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