

complaint

Miss K complains that MBNA Limited won't honour a settlement agreement reached before her credit card debt was sold on to a third party.

background

Miss K contacted MBNA when she was experiencing financial difficulties. As a result, MBNA agreed to accept reduced monthly payments and waived all future interest and charges. It said a default would be registered with the credit reference agencies as she wasn't paying the minimum contractual amount.

A couple of months later, it sent her a notice of default letter which said unless she paid the outstanding arrears (at that stage a four figure amount) then her account would be terminated. She was unable to meet this demand, so her account defaulted and MBNA sent her a letter shortly after confirming termination of the credit agreement.

Bank records show that some time after, Miss K had two phone calls with MBNA. And very soon after that, MBNA sold on her outstanding debt to a third party. It told Miss K it wanted a figure almost three times the amount MBNA had agreed to accept in partial settlement – and it gave her a very short deadline to pay.

Our adjudicator didn't uphold the complaint on the basis that MBNA's actions were fair and reasonable. Miss K disagrees, so the complaint has been referred to me.

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 sympathise with her position and I understand that Miss K feels strongly that the partial settlement figure put forward by MBNA should be binding.

Lenders must respond positively and sympathetically to a customer in financial difficulty. So, I'd expect MBNA to offer to assess Miss K's situation when she asked it to agree to accept reduced payments from her - and I can see it did do this. And it put her account into default, which I think can be helpful when a person is in financial difficulty, because this stops interest and charges being added to the account and effectively freezes the debt.

I have considered everything that Miss K and MBNA have provided. But, based on the information I have seen, I can't fairly say that Miss K didn't receive ample prior warning that her debt could be sold on to a third party – or that a third party wouldn't be bound by any previous settlement terms discussed with MBNA.

I say this because I can see that letters MBNA sent Miss K warned of the possibility of her debt being sold. And the transcripts I've seen of phone calls Miss K had with MBNA show that she couldn't offer the full amount MBNA had asked for – and she was advised she would have to renegotiate a partial settlement amount if her debt was sold.

I've taken into account that at the time Miss K had made an offer of payment that fell short of the amount MBNA had set as the minimum acceptable figure – and the adviser she spoke to on the phone said he'd refer this to his manager.

But, the account terms and conditions allow MBNA to sell debts on to a third party – and I have found that Miss K had been warned of this possibility. So I don't feel I can fairly say that MBNA acted unfairly or unreasonably when it sold Miss K's debt on - just based on what she says.

I appreciate that Miss K feels that I might not have seen full details of every conversation she had with MBNA. But I feel I have seen enough information for me to reach a fair and reasonable decision on her complaint.

Miss K has recently complained that MBNA hasn't provided copies of paperwork she feels she's legally entitled to have. If she hasn't already taken up this matter with MBNA as a complaint (and so far as I can see it hasn't been addressed as part of this complaint), then she can do so. And if she's still unhappy after the bank sends her a final response letter, then she may be able to bring a complaint about this to the Financial Ombudsman Service if she'd also like us to look into this matter. I am concerned here just with her complaint about the way MBNA has dealt with her outstanding credit card debt. So these points don't change my conclusion.

I agree with our adjudicator that, looked at overall, MBNA has given a fair and reasonable response to this complaint. I can't fairly require MBNA to honour the original partial settlement figure offered to Miss K because the bank has sold the debt on – as it was entitled to do. And I am satisfied Miss K received prior warning it could be sold so I can't fairly say MBNA acted unfairly or unreasonably when it did this.

my final decision

For these reasons, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss K to accept or reject my decision before 6 March 2015.

Susan Webb
ombudsman