

complaint

Mr P complains that MBNA Limited should have recorded a default against him in relation to his debt.

background

Mr P had a credit card debt with MBNA. In 2010, he says found himself in financial difficulties. He says used a debt management company (DMC) who contacted his creditors and he entered a debt management plan. In May 2010, he says MBNA were offered a payment amount that would clear his debt within 10 years and they accepted. MBNA say once they knew he was having financial difficulties they made sure he wasn't paying interest and charges on his account.

Mr P made the agreed payments of around £87 until around September 2011. Then the records show the payment reduced to around £50. MBNA say they received a formal offer to make this reduced payment at the end of October 2011. In December 2011, MBNA say they transferred Mr P's debt to a third party and this was a business decision to get rid of debts that would take more than five years to clear. Mr P made payments to the new owner of the debt following the transfer. However, he fell into arrears and a default was registered in the autumn of 2013. There is a separate complaint against the debt purchaser but I won't discuss it here.

Mr P says MBNA should have recorded a default on this debt when his other creditors did back in 2010. He also thinks that their subsequent decision to sell his debt shows that it was obvious to them that he wasn't able to pay it off. He feels they should have defaulted then, even if they didn't earlier. He says he's been put in a worse position because of their failure to act because the default is on his credit file for longer.

MBNA said that it wasn't appropriate to register a default, either before or at the time they transferred his debt to the third party. They say what happened after the transfer was for the new owner of the debt to decide. Mr P complained to us.

The adjudicator got some further details. MBNA said the decision to sell Mr P's debt wasn't based on his personal circumstances. It was a business decision made about a set of loans, of which his was one.

The records showed that they accepted the reduced payments and reported to the Credit Reference Agencies (CRAs) that the payments were being made as agreed. MBNA also amended the minimum payment amount on Mr P's credit card statement to show the reduced amount. MBNA acknowledged that they didn't contact Mr P after the offer of the reduced payment that was made in October 2011.

The adjudicator didn't uphold the complaint. He thought that MBNA had acted reasonably when they hadn't defaulted Mr P's debt because he was making payments as agreed. Mr P disagreed. He felt very strongly that MBNA should have defaulted his debt in 2010, and he was in a worse position because he'd attempted to pay his debt.

MBNA then offered to backdate the default to November 2011, the month after the offer of a lower payment was made. Mr P wasn't willing to accept this. The complaint came to me.

my provisional decision

I issued a provisional decision in this case. In summary, I concluded that:

- It was accepted that Mr P wasn't able to make the minimum payments on his credit card debt and he'd reached an agreement with MBNA to pay a reduced amount. Mr P felt that MBNA should have defaulted the debt because other creditors did so around this time. I accepted that might be the case but noted that there was an agreement to pay and both parties were sticking to it. I didn't think MBNA were wrong to allow the arrangement they had with Mr P to continue.
- With regard to the suggestion that MBNA should have registered a default at the time they sold the debt I thought that, since they'd made an agreement with him before they changed how they dealt with these types of debts, it wasn't unreasonable for them to allow the pre-existing arrangement to continue.
- Towards the end of 2011, it was agreed that the amount of Mr P's payments dropped. He offered a reduced amount at the end of October 2011. There was no formal acceptance of this by MBNA. However, the records showed that MBNA changed the minimum payment on his statement to reflect the reduced payment, and they told the CRA's he was paying as agreed. I thought it was clear from this that they did accept the reduced payment.
- The reduced payment meant Mr P's debt would take many more years to pay off, well in excess of the original period agreed. I thought it would have been appropriate for there to have been some discussion at this time about Mr P's continued ability to repay, and whether the debt should be allowed to continue over that extended period. MBNA had accepted that they didn't contact Mr P. If they had, I thought that a decision to register a default may well have been made sooner.
- If MBNA had contacted Mr P after the reduced offer was made on 27 October 2011 then it would've taken time to register a default as there was a process to be followed. I thought backdating the default to 30 November 2011 was a fair way to resolve this complaint. MBNA had already said they were willing to do that. I didn't intend to ask them to do anything more.

I gave Mr P and MBNA the chance to comment on my provisional decision. They both indicated that they accepted it.

my findings

I'm grateful to both Mr P and MBNA for taking the time to respond to me. I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Since both parties have accepted my provisional decision, I see no reason to depart from my original view.

my final decision

My final decision is that MBNA Limited should tell the Credit Reference Agencies that the default should be applied from 30 November 2011.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 27 February 2017.

Nicola Crabb
ombudsman