

complaint

Mr W complains that MBNA Limited unfairly pressurised him to enter into two repayment plans in 2008. He also thinks it isn't fair that the bank continues to report adverse information to the credit reference agencies about his accounts.

background

Mr W had financial difficulties in 2008. He went to a debt management company who proposed a debt management plan to reduce the payments to Mr W's creditors, including for his two MBNA credit cards. The bank told him that the repayment amount offered was not enough to stop his accounts being defaulted and a higher amount was agreed to avoid this.

Since then, Mr W has made numerous complaints to MBNA about the administration of his two accounts. In March 2014, Mr W brought his complaint to this service saying, amongst other things, that:

- he received a barrage of calls from MBNA asking for more money;
- it is unfair that the bank can break so many Office of Fair Trading (OFT) rules; and
- his accounts should have been defaulted in August 2008 instead of continuing to have an arrangement marker on them.

Our adjudicator felt that the issue of the amount of calls MBNA made had been addressed before by this service under a previous complaint. He also found that MBNA hasn't acted incorrectly and that it isn't fair and reasonable to try and significantly change the details of his debt management plan when he agreed to it in 2008.

Mr W disagrees and continues to complain that:

- MBNA's collections department made numerous call to him, pressurising him into agreeing to the debt management plan;
- MBNA sent him reconstituted credit agreements that may not be enforceable;
- he understood that the bank had started legal proceedings in 2008; and
- MBNA is reporting adverse information to the credit reference agencies in breach of the Information Commissioner's Office (ICO) principles.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is contradictory, as some of it is here, I reach my decision on a balance of probabilities – that is, what I consider is most likely to have happened in the light of the evidence that is available and the wider surrounding circumstances.

While Mr W has made numerous arguments to support his complaint, my final decision focuses on what I consider to be the central issues.

debt collection calls and enforceability of the credit agreements

Several of Mr W's complaints, including the debt collection calls and the validity of the credit agreements, were dealt with by this service at the end of 2011. Under our rules, I may

dismiss a complaint without further consideration of the merits in certain circumstances. The relevant rule is at DISP 3.3.4 in the Financial Conduct Authority handbook. It says:

“The Ombudsman may dismiss a complaint without considering its merits if he considers that:

(6) the subject matter of the complaint has previously been considered or excluded under the Financial Ombudsman Service, or a former scheme (unless material new evidence which the Ombudsman considers likely to affect the outcome has subsequently become available to the complainant)”.

So, for these reasons, I find it isn't appropriate for me now to reconsider Mr W's complaints about these issues and I am dismissing them without further consideration.

legal proceedings

Mr W says that MBNA started legal action against him and threatened to put a charging order on his mother's property. I can find nothing to show that MBNA started legal action. Mr W did receive a letter in July 2008 from the bank's solicitors. This showed what action MBNA could take to enforce the debt and that it may have no alternative other than to start legal proceedings to obtain a charging order against him. On balance, I think Mr W took this to mean that legal action had started. Also, as he was living with his mother at the time, I think he felt that the charging order would affect her property. But the debt was owed by Mr W, not his relatives, so MBNA had no legal power to put a charging order on someone else's property. I can't find anything to indicate that MBNA threatened to put a charging order on his mother's property. I see no reason why MBNA shouldn't have been entitled to send the letter.

credit reference agency information

MBNA accepts that it registered a default incorrectly and also recorded an incorrect type of search against Mr W. But these entries have been corrected. I have seen nothing else that indicates the bank is reporting wrong information to the credit reference agencies. Mr W's accounts are subject to repayment plans and MBNA is entitled to report this.

OFT requirements

Mr W points out, and it is on record, that the OFT has previously required MBNA to improve its debt collection practices. But this doesn't mean that the bank automatically treated him unfairly and I have found nothing to show that it did. MBNA says it accepted Mr W's original repayment plan offer made through his debt management company in July 2008. But when the bank told him his offer wasn't enough to prevent his accounts being defaulted, Mr W wanted to avoid this and agreed to increase his payments. MBNA rightly acted positively and sympathetically and froze the interest and charges on his account.

Mr W now says that his accounts should have been defaulted in 2008, meaning that as six years have now passed, the defaults would no longer be showing on his credit file. I don't agree. I think he wanted to avoid the defaults. Previously, Mr W was unhappy that one of the accounts was defaulted incorrectly and MBNA removed this as part of the resolution to his earlier complaint. I think it is unreasonable to expect the bank to retrospectively default the accounts now.

conclusion

I can see that Mr W feels very strongly about this matter and has spent a lot of time on it. While I realise my decision will come as a disappointment to him, I don't consider that MBNA has acted unfairly or unreasonably in this matter.

I remind MBNA that if Mr W is still experiencing financial difficulty, it should continue to treat him positively and sympathetically. If he wants to change his payment arrangements with MBNA, he should contact it to discuss them.

my final decision

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

Under the rules of the Financial Ombudsman Service, I am required to ask Mr W to accept or reject my decision before 26 February 2015.

John Miles
ombudsman