

complaint

Mr T has complained that MBNA Limited unfairly recorded a default on his credit file, and sold his debt to a third party.

background

Mr T had an account with MBNA. This had, it's been explained, been bought by MBNA from a third party.

On 7 April 2011, MBNA wrote to him about the account. In this letter it told him it had agreed to reduced monthly repayments of £121, that it had set a new interest rate of 0%, and that it would waive certain charges. It also said that if a repayment was missed, or the plan couldn't be maintained, a default may be recorded. Also, the agreed plan would end and fees and charges would be applied.

Around two years later, in July 2013, Mr T asked that his repayments be lowered to £49 a month. He's also missed some repayments. But MBNA didn't agree that payments of £49 a month would stop the account from defaulting, and it then recorded a default on Mr T's credit file. In the October, it passed the debt to another third party.

Mr T feels this is unfair. He feels this shouldn't have happened, on the basis the debt is unenforceable, and that he had a repayment plan.

Our adjudicator didn't recommend that the complaint should be upheld. She felt that MBNA had explained that the second repayment plan proposal wouldn't be sufficient to prevent a default from being recorded, and it had been fair for it to do so. She also felt it hadn't acted incorrectly in passing the account to a third party.

Mr T disagreed. In summary, he said:

- his request for documentation under section 78 of the Consumer Credit Act 1974 hasn't been addressed by MBNA, even though he paid a fee for this in May 2016;
- we need to take into account the law, which is that the agreement is unenforceable;
- as the agreement's unenforceable, MBNA can't report a default, as per a court ruling; and
- in the original agreement (between the original debt owner and MBNA), there was no right of assignment.

The complaint's now been passed to me for my final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I'm not upholding Mr T's complaint. I'll explain why. I've focused on the issues which I think go to the heart of what's happened.

MBNA accepted the original repayment plan. But when a lower one was later proposed, it didn't meet its criteria, so it said the account would default. It explained this in a letter to Mr T dated 19 August 2013.

MBNA's also provided a template letter containing a default notice that it said was sent in July 2013. I'm satisfied that it would, more likely than not, have been sent, as this was standard procedure. But in any event, Mr T was made aware of what was happening with his account.

For these reasons, I don't think it was unfair that a default was recorded, and I've seen no evidence that Mr T would've been able to bring his account up to date, in order potentially to avoid this.

Having defaulted the account, MBNA was entitled to sell the debt to the third party, so I don't think it behaved unfairly in doing so.

Mr T has explained that MBNA hasn't properly responded to his request for documents under the Consumer Credit Act. I disagree. It passed Mr T's request to the third party that now owns the debt. This is because the third party has been responsible for the administration of the debt since 2013, so MBNA wouldn't be dealing with this. I don't think this is unreasonable. It's also explained it contacted the original debt owner, but wasn't able to get any documentation. I don't think I can hold MBNA responsible for this.

As regards the original debt owner, Mr T's said there was no right of assignment in his agreement with it. As I've not been able to get a copy of this, I don't know what the terms and conditions said. But it's a very common term to have the right to assign, so I think it would likely have been there. But even if not, I don't think there was anything inherently wrong, on a fair and reasonable basis, in MBNA buying the debt.

I've also looked at the points Mr T's raised about enforceability. I accept that MBNA has said the debt is unenforceable. But whilst I've taken that into account, and the legal points Mr T's raised, I need to decide what I think's fair and reasonable. And because Mr T borrowed the money, I don't think it was unfair of MBNA to require it to be repaid. So it follows that I don't think it was unreasonable to have recorded a default, when this didn't happen and the second repayment plan wasn't agreed to.

I know this will be disappointing for Mr T, and I'm aware he's been open and upfront with his creditors, and has been making every effort to make repayments. But I'm afraid I don't have grounds to uphold his complaint.

my final decision

For the reasons given above, it's my final decision not to uphold this complaint. I make no award against MBNA Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 25 August 2017.

Elspeth Wood
ombudsman