

## **The complaint**

Mr T is unhappy with how MBNA Limited defaulted his account.

## **What happened**

Mr T contacted MBNA and asked for a payment holiday on his credit account because he was experiencing financial difficulty. Mr T was under the impression MBNA had agreed to provide financial assistance to him, but a few months later he discovered that MBNA had defaulted his account for non-payment without giving any prior notice to him of their intention to do so. Mr T wasn't happy about this, so he raised a complaint.

MBNA explained that because the account had fallen into a position of prolonged arrears they'd issued a default notice to Mr T in February 2023, advising that the account would be defaulted if the position of the account wasn't recovered in a timely manner. MBNA also explained that they'd sent a reminder to Mr T three weeks later and had only defaulted the account a few weeks after that, with Mr T not having contacted them and with the account arrears unresolved. Mr T wasn't happy with MBNA's response, especially as he hadn't received the letters MBNA referred to. So, he referred his complaint to this service.

One of our investigators looked at this complaint. But they didn't feel that MBNA had managed the situation unfairly and so didn't uphold the complaint. Mr T remained dissatisfied, so the matter was escalated to an ombudsman for a final decision.

## **What I've decided – and why**

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, it's evident that Mr T first told MBNA of the financial difficulty he was experiencing on 30 July 2021 and that MBNA placed a 30-day hold on the account at that time. This initial 30-day hold ended towards the end of August 2021, and Mr T contacted MBNA again approximately three weeks after that, on 17 September 2021.

At that time, MBNA asked Mr T to undertake an income and expenditure assessment with them, the results of which may have allowed MBNA to provide further financial assistance to him regarding his account. Mr T couldn't undertake the assessment at that time, so a further 30-day hold was applied to the account to enable Mr T to call back within that timeframe and complete the assessment. But Mr T didn't contact MBNA again to complete the income and expenditure assessment as requested.

When a credit provider such as MBNA is contacted by an account holder who is experiencing financial difficulty, that credit provider is obliged to treat their account holder positively and sympathetically. But there are limits to the level of support a credit provider is expected to offer. And importantly, when an account holder is experiencing financial difficulty and struggling to meet the contractual payment requirements of their account, this doesn't absolve that account holder of those contractual payment requirements.

What this means is that while a credit provider can agree to freeze interest on the account for a short period of time, as MBNA did in this instance, the account holder is still required to make the monthly payments as contractually required on the account. And if the account holder can't make these payments – as Mr T couldn't in this instance – then arrears are considered to have accrued on the account and the credit provider has an obligation to report these arrears to the credit reference agencies.

This is explained in the letters MBNA sent to Mr T confirming the two agreed 30-day holds dated 3 August and 18 September 2021, which explained that the accrual of interest has been frozen for 30-days but that the contractual monthly payments were still due. And these letters also explained that if Mr T's account fell into a position of arrears, this would be reported to his credit file. And, because Mr T couldn't make the contractual monthly payments due on the account, his account did fall into arrears.

The Information Commissioner's Office ("ICO") issues guidance on when a credit provider such as MBNA should consider defaulting a credit account for the non-payment of account arrears. This guidance includes that a credit provider should generally provide a notice to an account holder that their account may be defaulted when that account has fallen into around three months of arrears, and that an account should be defaulted preferably before an account falls into more than six months of arrears.

Upon review, MBNA appear to have acted in line with this guidance. And I say this because when MBNA issued a default notice to Mr T in February 2022, the account was several months in arrears, and MBNA then proceeded to default the account before the level of account arrears grew significantly.

As such, I feel that MBNA haven't acted unfairly towards Mr T by issuing the default notice and later defaulting the account as they did. And it must be noted that the reason accounts in prolonged arrears are expected to be defaulted by credit providers is because the act of default freezes the balance outstanding and stops the further accrual of interest and charges, meaning the account holder doesn't continue to fall further and further into debt.

Mr T has explained that he didn't receive the default notice that MBNA sent, and so feels that MBNA haven't fairly notified him of their intention to default the account. But MBNA have been able to demonstrate to my satisfaction that they did send the default notice and the reminder letter to Mr T, and that these were addressed to the correct address – the address which Mr T has provided to this service as being his own. And while it may have been the case that these letters weren't received by Mr T, this service wouldn't hold MBNA accountable for the non-delivery of correctly addressed letters, given that the delivery of such letters is undertaken by a postal service over which MBNA have no direct control.

Additionally, it remained the responsibility of Mr T, as the account holder, to be aware of the ongoing position of his account. And I feel the potential consequences of prolonged arrears were explained to Mr T in the 30-day hold confirmation letters as well as by the MBNA agents he spoke with to arrange those holds. And given that Mr T didn't contact MBNA to conduct an income and expenditure assessment as he'd agreed to or respond to the letters that MBNA sent to him following that conversation, I don't feel that MBNA acted unfairly or unreasonably in how they administered his account from that point.

Mr T feels that because he's now cleared the balance outstanding on the account that the default should be removed. But as alluded to above, credit providers such as MBNA have an obligation to make factual reports to the credit reference agencies. And Mr T did default on his credit agreement with them. So, I'm satisfied that MBNA reporting this default is factual.

Finally, Mr T is unhappy that his account debt was sold by MBNA to a debt recovery agency. But the transferal of debt to recovery agencies is a common practice and one which is addressed and permitted by the terms of the credit agreement which Mr T agreed and consented to when he opened the credit account. As such, MBNA didn't require any further authorisation from Mr B beyond this to sell the debt to the recovery agency as they did.

All of which means that I don't feel MBNA have done anything wrong or acted unfairly here. And it follows from this that I won't be upholding this complaint or instructing MBNA to take any further action. I realise this won't be the outcome Mr T was wanting, but I hope he'll understand, given what I've explained, why I've made the final decision that I have.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 2 October 2023.

Paul Cooper  
**Ombudsman**