

The complaint

Miss S complains that MBNA Limited defaulted her credit card account while she was still making repayments.

What happened

Miss S has two separate credit card accounts with MBNA – one of which has now defaulted, which is the crux of her complaint.

Miss S says that she got into financial difficulty when she stopped working due to illness. She says during this time she was using both credit cards to meet her living expenses. Miss S adds that while the balances were on a 0% promotional rate, she was able to maintain the repayments. However, once the promotional period ended, the minimum repayment due increased to an unaffordable amount. Miss S says that she was finding it difficult to get work, and the result of the increase in repayments and her no longer working meant that she couldn't meet the minimum repayments due, and the accounts fell into arrears.

In 2021, Miss S got a new job, and contacted MBNA to set up a repayment plan. She says that MBNA refused to set up a repayment plan with her before going through an income and expenditure assessment – which Miss S didn't want to do as she would find this too stressful. Miss S said she would pay £150 a month off each card, but MBNA didn't accept this.

Miss S says that she started making repayments of £100 to both cards in October 2022 – she tried to maintain this monthly repayment although recognises that she did miss the January 2023 repayments.

Miss S noticed the impact the lower repayments were having on her credit file, so she says she took the decision to pay £200 off one card (Account 1), and continue with the £100 on the other card (Account 2) – so she could clear the arrears on Account 1 quicker, with the intention of then doing the same on Account 2.

In November 2023, Miss S says she logged into her online banking app to make a repayment and saw that Account 2 had been removed from the app – which meant she couldn't see the balance, statements or make a payment to that account. Some days later, Miss S received a letter from MBNA stating that her credit agreement for Account 2 had ended due to the outstanding arrears.

Miss S adds that MBNA requested a call with her, which she had previously advised she couldn't do as she would find a conversation too upsetting and stressful – so she wanted communications to remain in written format.

In response to Miss S's complaint, MBNA confirmed that Account 2 had defaulted. It confirmed that she could continue repaying Account 1 as she had been and that it would notify her when interest would be applied.

Miss S says she wasn't notified when interest started again – and despite her statements saying that her estimated interest for the following month was £0 – it charged her around £113 in interest the following month.

To put things right, Miss S has said MBNA should remove the default on Account 2; allow her access in the app to track her balance and make repayments; cease charging interest on Account 1; refund interest and charges paid and use these to reduce the arrears on Account 2; agree to an affordable repayment plan.

When MBNA provided this service with its business file, it changed its stance on Miss S's complaint. Having reviewed matters again, it said it should have defaulted both of Miss S's accounts back in early 2022 – it said that at this time, Miss S wasn't making repayments to either card and there was no repayment plan in place. It said that the accounts hadn't defaulted due to an error on its part.

Because of this, MBNA offered to backdate the default date on Account 2 to December 2021 and remove late payment markers after this date. In relation to Account 1, it said it would refund interest from December 2023 (although I think this was a typing error and should have said 2021), ensure all future interest is waived and remove late payment markers. It said it would also like to offer Miss S £200 compensation for not following its process back in 2021.

The Investigator thought that MBNA's offer was fair – and communicated this to Miss S. Miss S didn't agree that MBNA's offer was a fair way to resolve things. In summary, she didn't think Account 2 should have defaulted and so changing the date wouldn't help her. She felt the offer to refund interest and remove information from her credit file in relation to Account 1 was more reasonable – as long as MBNA didn't remove her access to manage this account in the app. Miss S also didn't think the £200 was sufficient given that she didn't feel that its decision not to remove the default was fair.

The Investigator reconsidered MBNA's offer and agreed with most of what MBNA had suggested to put things right, but they felt the compensation award should be increased to £400.

MBNA asked for an explanation for the increase in compensation – the Investigator provided this, but MBNA didn't say whether it accepted this or not. So, for the purposes of this decision, I've assumed that it hasn't.

Miss S says she didn't want to accept the offer without understanding the implications – for example would she regain online access for Account 2, or would Account 1 lose access. Miss S said she didn't feel any amount of compensation would be sufficient to recognise the distress the situation had caused her.

Because an agreement couldn't be reached, the complaint was passed to me to decide on the matter.

I previously issued a provisional decision on this case. I had a different view the Investigator on what MBNA should do to put things right for Miss S. Because of this, I wanted to provide both parties the opportunity to respond to the provisional decision.

I have copied my provisional findings below, which also forms part of this final decision.

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

I think it's important to firstly explain I've read and taken into account all of the information provided by both parties, in reaching my decision. I say this as I'm aware I've summarised Miss S's complaint in significantly less detail than she has. If I've not reflected something that's been said it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless I think it's relevant to the crux of the complaint.

I'd like to express my empathy for Miss S's situation. It's clear that she's been through a very difficult time which has, understandably, caused her much upset. In reaching my conclusion, I don't wish in any way to downplay or disregard the situation Miss S has found herself in. But being independent means, I have to take a step back and consider what both parties have said.

Based on what I've seen so far, I think MBNA's original offer to Miss S was fair. And I'll explain why I think this below.

The Information Commissioner's Office (ICO) provides guidance about when an account should default – and this is generally when it is between three and six months in arrears. Miss S's account was many months in arrears, more than six, at the point MBNA defaulted it, so I don't think it's decision to default Account 2 was unfair.

That said, looking at the repayment history of both accounts, I agree that MBNA should have defaulted both accounts in 2021, as MBNA has suggested. That's because, at this time, Miss S wasn't making repayments, and there was no repayment plan in place – meaning that arrears were continuing to build on both accounts.

I think MBNA's offer to backdate the default on Account 2 is fair. I appreciate Miss S doesn't believe this will benefit her in any way, however given that it has been backdated, the length of time it will be showing on her credit report will be less than it would have been had the original default date remained.

In relation to Account 1, I agree it wouldn't be fair to now default this account given that Miss S has since cleared the arrears. But I think MBNA's offer to refund any interest applied to the account since December 2021, waive future interest charges and remove the late payment markers that have been applied since December 2021 from her credit file is fair. I say this because this is what would have happened if the account had defaulted in 2021, so I think this course of action reflects what the balance of the account would have been if it had defaulted when it should have in 2021.

I have thought about MBNA's offer of £200 here, and I am persuaded that this is fair compensation in the circumstances. It appears Miss S's main cause of distress here is the impact of the default itself, which I'm not asking it to remove because it wasn't unfair of it to have been applied. I do think that MBNA's mistake in not defaulting the account sooner has likely led to some extra distress for Miss S in having interest applied to her account when it shouldn't have been, and late payment markers applied to her credit file each month. But I think the £200 compensation it has agreed to reflect the distress and inconvenience caused is fair.

Unable to access the app

The terms and conditions of MBNA's online services state that:

“8.3 We may suspend, restrict or stop your use of Online Services, the Additional Services or the use of your security details if we reasonably think this is necessary because, for example:

... i) this agreement ends.”

Miss S’s agreement on Account 2 ended when the account defaulted. So, I don’t think it unfair or unreasonable of MBNA to have removed her online access.

Because Account 1 hasn’t been defaulted, I would expect MBNA to still allow Miss S to manage this account using the app.

Customer service and communication needs

I note that Miss S says she was disappointed when MBNA added interest to Account 1 when she wasn’t expecting it. She’s said her statement says that her estimated interest for the following month was £0. And when she saw the following statement, she was charged interest. I can see that MBNA said it would let Miss S know when it would charge interest again. So I can understand why Miss S would have felt let down. That being said, MBNA has already agreed to remove the interest from the account, and so I think this is a fair way to put this part of her complaint right.

I can see Miss S has told this service that she had previously asked for MBNA to only contact her in writing – because she finds it difficult to speak about her situation over the phone. I can see from the notes when MBNA did speak to her on the phone, it gave her the option of providing information in writing (for example an income and expenditure assessment), so she didn’t need to call. It also explained that Miss S’s account was being dealt with by a Specialist Support Team who were aware of Miss S’s situation. So I think it has tried to support Miss S since it has been aware of her circumstances, and it has taken into account her preferred method of communicating.

Miss S says that MBNA didn’t treat her fairly when it wanted to speak to her about her complaint, and instead provided a response without her giving her side of what happened. While I can understand why Miss S was upset by this, I think she was able to provide her version of events when she first made the complaint. And MBNA investigated her concerns based on the information it had, so not to have to speak to Miss S. I don’t think it has acted unfairly or unreasonably here.

Summary

Based on everything I’ve seen; I’m satisfied that both Miss S’s accounts should have defaulted in December 2021. And I agree overall with how MBNA have agreed to put things right, now that matters have moved on. MBNA should put things right for Miss S by:

Account 1 (account that hasn’t already defaulted)

- Refund interest and charges applied after December 2021.*
- If the refund of interest and charges puts Miss S into a credit balance, then MBNA should pay Miss S 8% simple interest from the date she would have gone into a credit balance until the date it pays her.*
- Stop further interest and charges being applied to the account*
- Remove adverse information from Miss S’s credit file from December 2021.*

Account 2 (account that has defaulted)

- *Report the account as having defaulted in December 2021 to the credit reference agencies*
- *Refund any interest or charges applied to Miss S's account after December 2021.*
- *If the refund of interest and charges puts Miss S into a credit balance, then MBNA should pay Miss S 8% simple interest from the date she would have gone into a credit balance until the date it pays her.*
- *Stop further interest and charges being applied to the account.*
- *Remove adverse information recorded on Miss S's credit file after December 2021 (the default should still remain).*

In addition to the above, MBNA should:

- *Pay Miss S £200 to reflect any distress and inconvenience caused to her when it didn't follow the correct process for defaulting the account in 2021."*

MBNA responded to my provisional decision to say it accepted the findings.

Miss S responded, and I have summarised her main points below:

- She didn't think it was accurate to say that she had been able to provide her version of events when she made her complaint, as MBNA wouldn't engage with her about it in writing and would only speak to her on the phone.
- She reiterates that her complaint is about Account 2 defaulting when it did. She feels it was unfair of MBNA not to allow her to pay off the arrears like she did with Account 1. She adds that MBNA wouldn't allow her to set up a payment plan, as it wouldn't communicate with her in a way that suited her.
- £200 award isn't enough to reflect the distress and inconvenience she has been through as a result of MBNA's actions. She refers to its unwillingness to set up a repayment plan without her having to go through an income and expenditure form; decision to charge interest on Account 1 without notice; decision to default Account 2 even though she stuck to the amount she told them she could pay; ongoing impact to her credit score.

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 considered everything again, I will be upholding Miss S's complaint. However, I accept that my decision will likely disappoint Miss S, as my decision on what I require MBNA to do to put things right hasn't changed.

I can see notes of the conversations that took place between Miss S and MBNA when she let it know she was struggling to pay. I can see that she didn't want to go through an income and expenditure assessment with it as she would find this too stressful. I can see from the notes that MBNA told Miss S she could do this in writing, as this is the communication she preferred. However, from what I can see, and based on Miss S's comments, she didn't complete an income and expenditure form.

MBNA wouldn't have been able to agree to a repayment plan with Miss S until it had gone through an income and expenditure assessment – that's because it is required to ensure that any repayment agreement is affordable. So, I don't find MBNA to have acted unfairly when it didn't agree a plan with Miss S. And I'm satisfied that MBNA provided Miss S with the option of sending this in writing when it became clear she didn't want to go through it on the phone.

As I stated in my provisional decision, Account 2 was in many months of arrears when it defaulted. And so, I don't find it to be unfair that MBNA took the action to default the account. I appreciate that it was Miss S's intention to repay the arrears in the same way she had done on Account 1, but the arrears on Account 2 had been outstanding for a long time. It wasn't unreasonable of MBNA to have defaulted Account 2 – however it is still my view that it should have done this sooner. But this doesn't change my view that the account was in a position of default at the time it actually defaulted.

A default will likely have a negative impact on a person's credit file. However, a credit file should be an accurate reflection of how an account has been managed. In this case, I'm satisfied that the reporting of the default is fair. However, the default should be recorded as having happened in 2021, as this is an accurate reflection of when the account should have defaulted.

I have noted Miss S's comments in relation to the distress and inconvenience award. I have thought about this carefully, however, I'm satisfied that £200 is fair and reasonable in this case. It's seldom straightforward to decide on appropriate levels of compensation for non-financial losses. Not least because the impact on the consumer will be, by its very nature, subjective and difficult to quantify. When deciding on fair compensation, I have taken the overall impact of the things MBNA got wrong on Miss S, together with our published approach to compensation for distress and inconvenience, which can be found on our website.

In this case, I'm persuaded that MBNA were wrong in not defaulting both accounts at an earlier point in time – and so the award here is for it not following its process in doing this. I also agree that MBNA should have provided Miss S with notice of when it was going to start charging interest again, but it has agreed to refund the interest anyway, which I feel is fair here. However, these are the only points where I think MBNA could have done better. And so when I've considered a compensation award, I have thought about the impact of these two events, and I'm satisfied that £200 is sufficient.

Putting things right

MBNA should put things right for Miss S by:

Account 1 (account that hasn't already defaulted)

- Refund interest and charges applied after December 2021.
- If the refund of interest and charges puts Miss S into a credit balance, then MBNA should pay Miss S 8% simple interest from the date she would have gone into a credit balance until the date it pays her.
- Stop further interest and charges being applied to the account
- Remove adverse information from Miss S's credit file from December 2021.

Account 2 (account that has defaulted)

- Report the account as having defaulted in December 2021 to the credit reference agencies
- Refund any interest or charges applied to Miss S's account after December 2021.
- If the refund of interest and charges puts Miss S into a credit balance, then MBNA should pay Miss S 8% simple interest from the date she would have gone into a credit balance until the date it pays her.
- Stop further interest and charges being applied to the account.
- Remove adverse information recorded on Miss S's credit file after December 2021 (the default should still remain).

In addition to the above, MBNA should:

Pay Miss S £200 to reflect any distress and inconvenience caused to her when it didn't follow the correct process for defaulting the account in 2021.

My final decision

For the reasons set out above, I uphold Miss S's complaint. I order MBNA Limited to put things right for Miss S by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 13 January 2025.

Sophie Wilkinson
Ombudsman