

## complaint

Mr C complains MBNA Limited have wrongly recorded “arrangement to pay” markers on his credit file since 2008 when they should’ve defaulted his account and recorded that on his credit file instead.

## background

I issued a provisional decision in this case on 30 March 2016. I’ve attached a copy to this decision. It set out the background to this case and my provisional conclusions. In summary, I found MBNA were wrong to use “arrangement to pay” markers on Mr C’s credit file.

Mr C didn’t reply but his wife wrote to us with some questions about my provisional decision. He was concerned with how the decision would be enforced if MBNA didn’t comply. He understood the provisional decision proposed “arrangement to pay” or similar markers to continue up to September 2012. And he was worried this would be on his credit file until September 2018. He also asked for me to reconsider compensation. Mr C felt MBNA’s reporting on his credit file was the reason he and his wife’s re-mortgage application was declined four years ago. And as a result they remained on their existing mortgage and have paid more interest than if they’d been accepted for the new, more competitive, mortgage

MBNA sent additional information which, they felt, may change my decision. They said the changes to the account in 2006 didn’t change the agreement. They told us they’d removed the arrears from the account on receiving three consecutive payments and this was only done once in the lifetime of an account. And MBNA asked for clarification on the steps I’d proposed they now took and how this should be reported, by them, to the credit reference agencies. They also asked me to clarify the reasons behind my proposed award of £300 compensation to Mr C.

## my findings

I’ve reconsidered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint. Having done so, I remain of the view that the settlement set out in my Provisional Decision represents a fair and reasonable outcome to this complaint.

MBNA gave further information about the restructuring of Mr C’s accounts. But what they’ve said doesn’t change my view. They say *“we didn’t alter or change the agreement in any way”* but I’m not persuaded that’s the case. MBNA agreed a different payment structure for a term of 10 years and froze interest and charges on the account. And they told Mr C they’d removed the arrears from the credit file and reported to credit agencies the payments were up to date. So, having carefully considered what both parties have sent me, I still think this account’s been restructured. And my view on the steps MBNA should take remains the same.

Both parties have asked questions about the action I’ve directed MBNA to take. So, to be clear:

- I expect MBNA - who say they were responsible for reporting on the credit file *up to* September 2012 - to report *now* to the credit reference agencies that the historical “arrangement to pay” markers from December 2006 to September 2012 should be removed;

- Instead, I expect MBNA to report *now* to the credit reference agencies - for that period December 2006 to September 2012 – that they should record the correct payment was received – as that’s what Mr C did under the restructured arrangement; and
- I expect MBNA to inform the company to whom they sold Mr C’s debt, the restructured arrangements should be reported from September 2012 in the same way as above, if and until a further agreement between the new debt owner and Mr C’s been reached.

I’ve explained I felt MBNA’s action placed Mr C under considerable stress for a long period of time and set out my reasons for thinking this. The amount of compensation I’ve awarded is to reflect that. Mr C hasn’t sent us anything to show the re-mortgage application was refused as a result of MBNA’s entries on his credit record. Lenders take into account many factors when deciding whether to lend, such as affordability and property value. So, I can’t be sure these particular entries on his credit record were the reason the application’s been declined. My role is to place Mr C back in the position he would’ve been had MBNA not made this mistake. And, I think the steps I’ve asked MBNA to take do this.

### **my final decision**

So for the reasons I’ve explained my final decision is to uphold this complaint.

I direct MBNA Limited to:

- remove the “arrangement to pay” markers from Mr C’s credit file from December 2006 until September 2012, when they sold the debt on;
- record on Mr C’s credit file the terms of the restructured agreement in December 2006 and the payments received under it until September 2012;
- let the company they sold the debt to know that the restructured agreement should be recorded on Mr C’s credit file from September 2012 onwards; and
- pay Mr C £300 in compensation.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 1 July 2016.

Annabel O’Sullivan  
**ombudsman**

**copy – provisional decision**

## **complaint**

Mr C complains MBNA Limited have wrongly recorded “arrangement to pay” markers on his credit file since 2008 when they should’ve defaulted his account and recorded that on his credit file instead.

## **background**

Mr C told us in 2008 he had financial difficulties so MBNA set up a payment plan for him. But he thought the account should’ve been defaulted then as he couldn’t afford to make payments, rather than marked with “arrangement to pay” markers. In 2014 Mr C contacted MBNA as “arrangement to pay” markers had been on his credit file since the 2008 agreement. And they’d continue to appear whilst the debt was being repaid and for 6 years after. Mr C felt he was worse off for trying to pay his debts as if, in 2008, he’d not paid and the account had been defaulted it would’ve been on his credit file for only 6 years, until 2014. And Mr C thought this was unfair and put him at a disadvantage to someone who’d not paid.

MBNA didn’t agree. They thought it would be wrong and misleading for them to now record a default back in 2006 – when they say the agreement was reached - as what they’d done then was to agree proposals for a 10 year repayment plan. And MBNA didn’t feel their relationship with Mr C had broken down. Mr C was unhappy so he complained to us.

Our adjudicator found the recording of “arrangement to pay” markers on Mr C’s file to be unfair. He thought the agreement reached in 2006 for reduced payments wasn’t a temporary arrangement. And recommended MBNA placed a default on the account when Mr C first entered the repayment plan in November 2006.

MBNA didn’t agree. As Mr C made payments regularly under the restructured arrangement they didn’t see how they could properly record a default. And MBNA felt it was necessary to report an “arrangement to pay” marker on Mr C’s credit file to reflect his financial difficulties.

## **my provisional findings**

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint. On the evidence I’ve seen so far I don’t think it was right to use “arrangement to pay” markers in this case. I agree with the adjudicator’s finding that the 2006 “restructured” agreement wasn’t temporary. It’s unusual for an arrangement to pay to go on for as long as it has in Mr C’s case.

Both parties have referred to guidance from The Information Commissioner’s Office during this complaint. That says an “arrangement to pay” *“involves a temporary, short-term (up to six months) arrangement”*. But here the “arrangement to pay” was intended, at the start, to run for much longer, either a 10 year or 182 month plan. And I don’t think either of those terms could reasonably be described as temporary or short term.

There are other factors which persuade me this arrangement wasn’t one where an “arrangement to pay” marker was appropriate. MBNA’s letter of 27 December 2006, confirming Mr C’s payments, refers to a “restructure”. The word “restructure” indicates to me the nature of the agreement has altered or changed in some way. And, the letter says the “restructuring” can only be offered once, which suggests it’s not likely to change or be subject to a regular review.

So, I don’t think using “arrangement to pay” markers from 2006 onwards was the correct way to mark this credit file. And I think Mr C’s ended up in a worse position by trying to pay his debts and agreeing to the “restructured” payment plan as it’s resulted in negative information on his credit file from 2006 to date. But, if he *hadn’t* made payments and this account *had* defaulted the negative markers would’ve remained for just 6 years, until 2012. And that seems unfair given that he’s made acceptable payments toward the debt for a long time – in some months actually paying *more* than the £131 he was required to under the restructuring.

So, I think Mr C's credit file should be corrected. But I don't think it's right to record the account as defaulting in 2006 instead. That's not what happened so it wouldn't be a true reflection of the account on the credit file. On 27 December 2006 MBNA confirmed to Mr C they'd restructured his account and would report the credit file as up to date. So, that's what Mr C was expecting to happen and MBNA should've done. And, I think the credit file should be amended to show this, together with the payments Mr C actually made under the new agreement.

So, for the reasons I've given, I think MBNA should remove the "arrangement to pay" markers from December 2006 onwards. Instead, I'm planning to direct MBNA to record the terms of the restructured agreement, and the payments under it. I understand MBNA sold the debt on to another company in 2012. That company has been updating Mr C's credit file since then, so MBNA should let the other company know about the outcome of this complaint and what Mr C's credit file should reflect.

Mr C's told us the situation is stressful and difficult for him and the markers have caused him considerable problems financially. And, although he's not sent us any specific information about those problems, I can see how it would've been a worry over a long period of time until he finally complained in 2014. So, I plan to direct MBNA pay him £300, which I think is appropriate compensation in the circumstances.

#### **my provisional decision**

My provisional decision is, subject to anything further MBNA or Mr C send me by 3 May 2016, to uphold this complaint.

I plan to direct MBNA Limited to:

- remove the "arrangement to pay" markers from Mr C's credit file from December 2006 until September 2012, when they sold the debt on;
- record on Mr C's credit file the terms of the restructured agreement in December 2006 and the payments received under it until September 2012;
- let the company they sold the debt to know that the restructured agreement should be recorded on Mr C's credit file from September 2012 onwards; and
- pay Mr C £300 in compensation.

Annabel O'Sullivan  
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