Financial Ombudsman Service

complaint

Mr D is unhappy with the amount of compensation MBNA Limited (MBNA) has paid to him for a mis-sold payment protection insurance (PPI) policy that was associated with his credit card.

background

Mr D opened his credit card in May 1995 and at the same time took out a PPI policy. When he complained the PPI had been mis-sold, MBNA agreed and offered to pay him compensation to settle his complaint. It paid this to him direct by cheque in March 2017.

Mr D later checked his records and felt the offer wasn't fair compensation. He said it included compensatory interest but only until 2004 and he felt the interest calculation should have been carried out until 2017 when his complaint was settled. Also, he didn't think the rate of interest MBNA had used was correct as he thought it should be a higher rate.

When MBNA said it wouldn't reconsider its offer, Mr D brought his complaint to this service.

Our adjudicator said they thought what MBNA had paid was fair. Mr D didn't agree and asked for an ombudsman to consider his complaint.

my findings

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

When Mr D first brought his complaint to this service in 2019 MBNA said this service shouldn't look at it. MBNA said Mr D was outside the six months' time limit given in the offer letter of February 2017 to bring a complaint about that offer to this service. Following evidence of some exceptional circumstances MBNA withdrew its objection and agreed this service could look at the substance of the complaint.

The PPI Mr D took out was paid for by a monthly premium being added to his credit card balance. This meant he would pay interest on the premiums unless he had cleared his balance in full. Interest was added on the balance for everything included in it, which was for the PPI and the other spending Mr D had made on his account.

MBNA has reconstructed Mr D's credit card account to show what it would have been if no PPI premiums had been added and the interest caused by these, known as associated interest, was also removed. This reconstruction showed the balance was lower and so the monthly repayments would also have been lower. The difference in the monthly payment actually paid and what would have been paid without PPI, has been taken by MBNA to be the amount Mr D paid towards the costs of the PPI each month and so was out of pocket for this extra payment amount.

I can see from the account information that Mr D did not make payments to the account every month. Payments were made but on a semi-regular basis. The last payment made was in December 2003. The PPI last premium charged was in January 2004. The account was already in arrears in 2003 and as payments stopped completely the account went further into debt.

Interest and charges were added to the balance until May 2004 and in June 2004 MBNA sold the debt to a third party. The debt that was sold was for the total owing on the account which was £17,527.39. Once the debt was sold MBNA had no legal interest in it and has been paid nothing more for that debt since.

Mr D borrowed the premiums for the PPI by adding them to his credit card balance, this is why interest was caused by them. MBNA has worked out the total charges for the PPI premiums added to the account balance was £6,325.50. These premiums caused interest of £7,230.67 whilst part of the balance on the account. So in total the PPI cost was £13,556.17. But Mr D did not pay all this back to MBNA, even though he borrowed this amount on his credit card.

Mr D did make payments to his account in some months and as I have indicated above as part of his payment he paid a little towards repaying the costs of the PPI in the balance. MBNA's calculations show that the extra amount Mr D paid as part of his payments for the PPI costs came to a total of £840.06.

It is only the £840.06 that Mr D has ever paid back to MBNA. The rest of the costs of the PPI remained in the balance of the account on which he defaulted and which was then sold. So Mr D was out of pocket only for the £840.06 and this is the amount that MBNA has worked out the compensatory interest on.

To work out the compensatory interest MBNA has in its calculations shown 8% simple interest per annum added each month for the amount Mr D was out of pocket in that month. It has carried on with that calculation to 2017 when it paid all the compensation to Mr D so he was out of pocket no longer.

For times before June 2004 different amounts of compensatory interest have been calculated based on the amount Mr D was out of pocket in that particular month. For every month from June 2004 (when the debt was sold) to February 2017, the 8% simple interest works out at £5.65 each month and is based on the total Mr D was out of pocket which was £840.06. In total the compensatory interest it £1,263.71.

The reason MBNA has used the rate of 8% simple interest per year is because this is what has been accepted as a fair rate when someone is out of pocket, that is when they do not have the use of that money. For any times before April 1993 the accepted rate is 15% simple per year, but this does not apply to Mr D's case as his account only opened in 1995. These rates are considered fair, being originally based on the rates the courts used.

When MBNA sold the debt in 2004 most of the costs of the PPI were still in that debt as Mr D had not paid back everything he had borrowed. Without the PPI the debt would still have been almost £5,000 for what Mr D owed without the PPI being added to his account. It isn't known if Mr D has repaid the debt he owed in full to the third party. But the evidence he has submitted, which includes letters from that third party, indicate that in December 2018 Mr D had not paid the debt. So, he had not repaid the costs of the PPI and been out of pocket for the full PPI costs when MBNA paid him the compensation in 2017.

This means that MBNA has paid to Mr D the full PPI costs that he borrowed even though he never paid it all back. As MBNA had no legal interest in the debt after June 2004 it was obliged to pay the full costs of the mis-sold PPI to Mr D even though he had never actually paid for it all. As he was never out of pocket for the full amount, only the £840.60, he is not entitled to compensatory interest on the amount of PPI in the debt.

I know Mr D has said he does not believe a financial institution would refund money it has never received but, in these circumstances, MBNA is obliged to do so as the PPI was mis-sold. This then allows Mr D to use this money paid to him by MBNA to reduce the PPI amount in the debt he still owes. MBNA has no legal connection any more with that debt so cannot directly remove the PPI from it. Therefore, it pays Mr D the money so he can do that. It is his choice if he does this, but he would still owe the full debt to the third party.

I hope I have addressed Mr D's points about why he did not receive compensatory interest after 2004 for the bulk of the PPI costs and also clarified the interest rates used and how the calculations are made. I have looked at Mr D's calculations, but these obviously work out different figures as he has based his calculations on the total cost of the PPI being paid by him which isn't what happened here.

Overall looking at how MBNA has worked out the compensation I am satisfied it is in line with what I would expect and is fair in the circumstances of this case.

Mr D is not entitled to compensatory interest on the full costs of the PPI as he never actually repaid this and so was out of pocket for all the PPI costs. He has been paid money by MBNA that he never repaid but that is means he can use it to reduce the debt sold by the amount of the PPI that remains in that debt.

What MBNA has paid and done is fair and so I am not upholding Mr D's complaint

my final decision

For the reasons I have set out above I am not upholding Mr D's complaint that more compensation is due as I am satisfied that what MBNA Limited has paid in compensation to Mr D is fair.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 30 May 2020.

Christine Fraser
ombudsman