



summary of complaint

Mrs D complains about interest being added to a debt that was subject to a court judgment. She is unhappy that interest was added and recovered by Phoenix Recoveries (UK) Limited Sarl through a charging order when the property was sold.

background to complaint

The adjudicator upheld the complaint. He felt it should have told Mrs D that interest would be applied and he did not think it was fair for Phoenix Recoveries to apply the interest of £3,752.15 to the debt.

Phoenix Recoveries responded to say, in summary, that interest is applicable and has accrued under the charging order as per section 3(4) of the Charging Order Act 1979.

my findings

I have considered everything that Mrs D and Mr D and Phoenix have said and provided to decide what is fair and reasonable in this complaint. Having done so, I have upheld this complaint.

I understand Mrs D's debt was from a credit card account. A court judgment was registered against the account and a charging order was issued in 2006 for £14,905.98. The account was settled in October 2009 when Mrs and Mr D's property was sold and this included interest of £3,792.46.

Phoenix says that interest is applicable and has accrued under the charging order as per section 3(4) of the Charging Order Act 1979. It argues that, whilst the original debt "did arise from a consumer credit agreement... the debt then became a judgment debt, which itself became a new debt entirely separate from the credit agreement". Put simply, Phoenix says that the original credit agreement no longer exists and it may charge interest on the amount secured by the charging order.

There is no legal precedent on the application of interest following a charging order where the debt is in relation to a consumer credit agreement. I have carefully considered Phoenix Recoveries' submissions relating to the cases heard at Guildford County Court and the judgment in *Ezekiel v Orakpo* (1997). However, the facts of those cases are materially different from the situation here.

Phoenix accepts that there was no right to charge post-judgment interest under the original credit agreement. I agree, therefore, that our adjudicator's implicit reference to section 130A of the Consumer Credit Act 1974 is not applicable. However, while the charging order does include the phrase "*together with any further interest becoming due*", it does not follow that interest is payable. Nor does the charging order expressly impose any interest. I do not accept Phoenix Recoveries' argument that interest could be charged because the original credit agreement has, in effect, ceased to exist.

Given the lack of judicial certainty and the absence of any specific right to charge interest in the original contract, the judgment or the charging order, I must consider what is fair and reasonable in the circumstances of this complaint.

It is clear that Mrs D was experiencing financial difficulties and this is why she was making nominal payments towards the debt. As such, Phoenix Recoveries was required to treat her positively and sympathetically. I do not consider that adding interest of £3,792.46 to her outstanding debt met that requirement. It follows that it should refund Mrs D the interest that was applied and paid through the proceeds of selling the house. Interest should also be added to this sum.

my decision

My final decision is that I uphold this complaint and order Phoenix Recoveries (UK) Limited Sarl to refund Mrs D £3,792.46, plus interest calculated at 8% simple per year from 30 October 2009 to the date of settlement.

If Phoenix Recoveries considers that tax should be deducted from the interest element of my award, it should provide Mrs D with the appropriate tax deduction certificate so that she is able to claim a refund if appropriate.

Mark Hollands
ombudsman