

complaint

Ms H has complained that she was mis-sold a payment protection insurance ("PPI") policy by MBNA Limited ("MBNA").

background

Ms H took out a credit card with MBNA in October 2000 and at the same time took out a PPI policy to protect her repayments.

Ms H wasn't able to keep up her payments with MBNA and she fell into arrears. MBNA closed her account and sold the outstanding debt to a third party in June 2004. After that, the third party who owns the debt took Ms H to court. They got a judgment against her for the outstanding debt and they got that secured against her house in a charging order.

Ms H tried to claim against her PPI policy when it was still running. She says that this took some time and, when she was waiting, MBNA added further fees and charges to her account between October 2002 and March 2003. She also says, under the terms of the credit agreement, MBNA weren't allowed to sell her debt on to a third party. Ms H has asked MBNA to pay to her everything she was charged for PPI, all charges made to her card, all court fees charged by the third party, the cost of removing the charging order over her property in favour of the third party and any ongoing interest charged by the third party.

In April 2007 MBNA offered to arrange for her debt with the third party to be reduced by £490, which was a partial reduction of some of the fees she'd been charged on her credit card. Ms H rejected this offer.

MBNA looked at Ms H's PPI complaint. In December 2012 it offered to pay to Ms H the cost of the PPI premiums she'd been charged on her account, the extra interest she'd been charged because of PPI and 8% per year simple interest for the times she was out of pocket. The total offer came to £1,010.07.

One of our adjudicators looked at MBNA's offer and thought it was fair. But Ms H disagreed, so the complaint was been passed to me for a decision.

In February 2016 I issued a provisional decision on Ms H's complaint. A copy of that decision is attached and forms part of this final decision.

My provisional findings were that MBNA had worked out the compensation for the mis-sold PPI in the right way. But I thought it needed to pay a further £1,005.69 because of other fees, charges and interest that had been added to the account because of PPI. I also asked MBNA to check whether it had paid £490 in 2007.

I looked at how MBNA had worked out compensation. I thought it worked out what Ms H was charged for PPI in premiums and interest in the way I'd expect it to. And I thought it had added 8% per year simple interest to the extra payments Ms H made. So I thought the offer of £1,010.07 was fair. As this had already been paid I didn't think MBNA needed to do anything more.

I didn't look at some parts of Ms H's complaint as I thought a court had already dealt with some issues. But I looked at the fees and charges that had been put on her account. And I looked at extra interest that had been charged *after* her debt had been sold to a third party.

MBNA said it had paid £490 in 2007 to the third party that had bought her debt. This was for some of the cost of the fees and charges that had been charged on her account. MBNA said it was prepared to pay Ms H £664 more, which was the rest of the cost of all the fees and charges. I thought this was fair, but I asked MBNA to check the £490 was paid.

I saw that the third party that bought Ms H's debt charged some interest. I thought £341.69 of this was due to PPI, so I thought MBNA needed to pay this to Ms H.

Ms H responded on 16 March 2016 to say she accepted my provisional decision. But she didn't agree MBNA were able to sell her account to the third party in the first place.

MBNA also responded to my provisional decision. It said the £490 was paid. It didn't contest my provisional decision and agreed to make the payments to Ms H I recommended.

my findings

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

As both parties have accepted my provisional decision I see no reason to change the conclusion I reached before.

Ms H maintains that MBNA shouldn't have sold her account to a third party, but for the same reasons as I set out before I don't think I should look at that part of the complaint.

MBNA have offered to pay all of the compensation I asked it to pay, but it hasn't accepted responsibility for the interest that the third party charged. I provisionally thought that MBNA was responsible, but as it's agreed to pay compensation I don't need to make a finding on this point.

my final decision

For the reasons set out above and in my provisional decision, I direct MBNA Limited pay Ms H £1,005.69.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 18 April 2016.

Mark Hutchings
ombudsman

copy of my provisional decision

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Ms H tried to claim against her PPI policy when it was still running. She says that this took some time and, when she was waiting, MBNA added further fees and charges to her account between October 2002 and March 2003. She also says, under the terms of the credit agreement, MBNA weren't allowed to sell her debt on to a third party. Ms H has asked MBNA to pay to her everything she was charged for PPI, all charges made to her card, all court fees charged by the third party, the cost of removing the charging order over her property in favour of the third party and any ongoing interest charged by the third party.

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One of our adjudicators looked at MBNA's offer and thought it was fair. But Ms H disagrees, so the complaint has been passed to me for a decision.

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.

MBNA has agreed to work out compensation in the same way as if I'd found it had mis-sold PPI, so I don't need to look at how PPI came to be sold to Ms H. But I do need to consider whether MBNA's offer is fair.

Ms H hasn't said that the amount of compensation MBNA has worked out for the mis-sale of PPI is wrong. And I think it's worked this out in the way I'd expect it. It's worked out the premiums charged for PPI and any interest charged on the premiums.

It's worked out any extra payments that Ms H made because of PPI and it's added 8% per year simple interest to those payments for the time she was out of pocket. This total offer came to £1,010.07. I understand this amount has already been paid.

But Ms H has raised other issues that I'll look into below.

whether MBNA should've sold her debt and court fees

Ms H was taken to court by the third party that owns her debt in 2009. I've seen that Ms H gave her side of the argument in a written statement. She didn't think her debt could've legally been sold on if she was still disputing it with MBNA. Ms H also thought MBNA had added fees to her account which it shouldn't have done.

I've seen that Ms H wasn't able to make her court hearing. A judge agreed Ms H did owe the third party money and ordered Ms H pay court costs. Ms H asked for another judge to look at this again as she was late to court because of a traffic problem. I've seen that another judge on a different day looked at the case again, but they didn't say anything different. They thought that Ms H didn't have any reasonable chance of success at a trial and they ordered more costs against her.

And it was the court that put the charging against her property. So I think a court has looked at some of Ms H's arguments and already decided them. So I'm not going to look again here at whether Ms H should pay the third party's costs, whether they had a right to buy the debt or whether MBNA should pay to take the charging order off her house.

Ms H has also complained about fees and charges that MBNA applied to her account. Ms H raised these in her court case with the third party, but I don't think they were responsible for

this – MBNA were responsible to answer her complaint about the charges. I've looked at this issue and set my thoughts out below.

fees and charges

MBNA wrote to Ms H in 2007 to offer her a £490 refund of the fees and charges added to her account. This was the difference in cost between what she was charged and what she would've been charged if MBNA had only charged £12 each time, rather than £25.

I asked MBNA what its position was on the other charges on Ms H's account, specifically those put on whilst she was waiting for the PPI to pay out between October 2002 and March 2003. MBNA said it was prepared to refund *all* of the charges applied to her account - £664 more. This includes fees and charges that weren't caused by her waiting for PPI to pay her claim. I don't think these charges were caused by PPI, so I wouldn't have told MBNA to refund all of these fees. It follows I think this is fair.

Ms H says she wants back the extra interest caused by these charges. As I've said, I don't think many of these charges were *caused* by PPI. And I'd only say MBNA should refund interest if the charges were caused by PPI – at most those charges put on the account between October 2002 and March 2003. As MBNA are offering to refund *all* fees and charges I'm not going to ask them to do anything more. I think they are already refunding more than the extra interest would've cost Ms H.

I've looked at Ms H's transaction history with both MBNA and with the third party. I can see that the £490 appears on her credit card history, but *after* the debt had already been sold on and the account closed. I can't see that MBNA ever paid the £490 to the third party. I'd like MBNA to check this before responding to this decision and, if it hasn't already, pay the £490 plus a further £664 to Ms H.

extra interest charged

Ms H was charged interest after the account was sold. This was some of the amount the court said Ms H should pay. The third party who bought the debt sent us some information about the account. I can see that the interest was charged until Ms H was first taken to court, but that she wasn't charged interest from then on. The amount of interest was £1,770.39.

I've looked at her balance before it was sold on and it amounted to £4,422.98. MBNA has estimated it would've been £3,570.96 without PPI, so 19.3% of her balance was due to PPI. It follows that 19.3% of the interest added by the third party wouldn't have been added but for the PPI. So Ms H should get this back. I also think MBNA either knew or should've known that the third party would charge interest. So I think MBNA should refund that part of the interest *caused* by PPI – I work this out as £341.69.

my provisional decision

For the reasons set out above, at the moment I think MBNA Limited needs to do something more to settle Ms H's complaint.

I understand the £1,010.07 has been paid, so I don't intend to direct it works out the compensation again.

I'd like MBNA Limited to check whether Ms H has been paid the £490 offered for fees and charges in 2007. If she hasn't been I intend to tell MBNA to pay this to Ms H.

I also intend to tell MBNA Limited to pay Ms H a further £664 for the fees and charges that were put on her account and a further £341.69 for the interest she was charged after the debt was sold. In total that comes to £1,005.69.

MBNA Limited and Ms H should now let me have any more information they want me to think about before I issue a final decision.

Mark Hutchings
ombudsman