

complaint

Mr H complains that after receiving his payment protection insurance (“PPI”) refund, he then received threatening letters and suffered belligerent and unresponsive behaviour from debt collection agencies collecting the outstanding debt on a credit card issued by MBNA Limited. Mr H wants compensation for the distress and inconvenience he’s suffered over the last three years, his costs for bringing the complaint and for drafting his appeals.

background

Mr H is unhappy that his debt was managed by three debt collection agencies on behalf of MBNA. He has been receiving threatening letters from the agencies and suffered from their belligerent and unresponsive behaviour for the last three years. This caused him distress and has taken up his time to deal with them. He says he wouldn’t have gone through all of this if MBNA hadn’t sold him the PPI in the first place – so he feels MBNA is at fault. He also points out that the last letter he received from a debt collection agency referred to a nil balance on the credit card debt. So he argues the debt no longer exists. Alternatively, he suggests the PPI refund of premiums should’ve wiped out his debt.

He more recently suggested that MBNA acted fraudulently by selling insurance when it had no legal right to do so. So he suggests the debt was automatically wiped out and couldn’t be sold on to the debt collecting agency. He also says it didn’t send him a copy of the insurance policy when he requested it.

MBNA told us it had terminated the credit card agreement after the account was more than six payments in arrears. Until that point, it had sent him monthly statements and letters warning him the account would be defaulted if he continued to miss payments. The Notice of Default was finally sent to Mr H in August 2011. And it sold the outstanding debt of £2,017.04 to the first debt collection agency (“Agency 1”) in November 2012. Once the debt was sold to Agency 1, MBNA said in a letter it “*no longer administered the debt*”. The action to terminate the agreement and assign the debt was allowed by the terms and conditions of the credit card agreement which Mr H would’ve signed.

The debt was then assigned by Agency 1 to the second debt collecting agent (“Agency 2”) in 2013 to act on behalf of Agency 1. The debt was assigned again to a third debt collecting agent (“Agency 3”) in 2014 to act on behalf of Agency 2.

In respect of the PPI, MBNA said it couldn’t find a copy of Mr H’s request for the policy. And it hasn’t addressed Mr H’s more recent suggestion that MBNA acted fraudulently when it sold him PPI.

Mr H complained to us. Our adjudicator thought the complaint shouldn’t be upheld because part of Mr H’s complaint should’ve been brought against the debt collecting agencies. And that our Service may not be able to deal with his complaints in the way he wants it to. Mr H disagreed with the adjudicator’s view and asked for the matter to be looked at again.

my findings

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

Having done that, I’ve decided not to uphold Mr H’s complaint and I’ll explain why.

I do appreciate that it was confusing that the debt was assigned by three debt collecting agencies, so it may not always have been clear as to who was dealing with the debt. But I saw the letter which MBNA sent to Mr H in 2012. It clearly explains the debt was sold to Agency 1 *“together with the rights to collection”*. The letter said it would only process any payments into the account and would transfer them to Agency 1. So it's clear MBNA had minimised the financial relationship it had with Mr H – it was no longer administering the debt. Any new actions to collect the debt were taken by Agency 1. And Agency 1 wasn't acting on behalf of MBNA. The debt was later assigned to Agency 2 and then on to Agency 3 who both carried on the debt collection action. So I don't think I can hold MBNA responsible for Mr H's distress and inconvenience over the last three years which he says was caused by the debt collection agencies.

I do also see that the last letter Mr H received from Agency 3 refers to a nil balance on his debt. So he says he doesn't owe any money at all. But the letter wasn't written by MBNA or on its behalf, so it wouldn't be fair or reasonable for me to hold it responsible for what Agency 3 has written.

I note Mr H's point that he wouldn't have gone through the last three years of stress if MBNA hadn't made a fraudulent PPI sale. But our Service hasn't investigated the mis-selling of the PPI (or whether the PPI contract was legally binding) because MBNA has already refunded Mr H in full for it without our involvement – so I can't make any final decision about it. Of course it is open to Mr H to complain separately to us about the mis-sale but he's already been told by our Service that he's unlikely to get any more compensation for it.

I also looked at whether the PPI premium refund should've wiped out the debt. And I do agree with Mr H that it should've wiped out the debt but only if he'd decided to pay it in to his credit card account. He *may* even have avoided the last three years of dealing with the debt collection agencies. But, for whatever reason, he decided not to use his PPI refund to settle the debt.

I then looked at Mr H's claim for the costs of lodging his complaint with our Service. We don't operate in the same way as the court system, and I can't award the cost of complaining against another party. So I won't be making any award against MBNA for Mr H's costs of bringing the complaint. I do appreciate that it takes time for a consumer to collect documents to send to us but I need them to consider the complaint.

Mr H has made several points about our Service's lack of competence and its failings, several legal points about MBNA's ability to sell PPI and the impact of those on the PPI contract. I don't propose to address them in this decision because the specific complaint I am dealing with is about his treatment after the PPI was refunded to him. If Mr H wishes to take those points further, he is of course able to seek other remedies.

I don't underestimate Mr H's strength of feeling about this complaint. But I have to consider whether MBNA has done anything wrong in the way it treated Mr H over the last three years. And taking everything into account, I don't think MBNA has done anything wrong here. None of the Agencies was collecting for or on behalf of MBNA, so it wouldn't be fair or reasonable to make MBNA responsible for the actions taken after it sold the debt on to Agency 1. So I'm not going to uphold this complaint and I know this will be a disappointment for Mr H.

my final decision

My final decision is that I do not uphold this complaint and I make no award against MBNA Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 September 2015.

Amrit Mangra
ombudsman