

complaint

Mrs G complains that MBNA Limited has unlawfully sold on her credit card debt to a third party and has not complied with the relevant legal requirements to entitle it in law to recover the debt.

background

Mrs G had a credit card account with MBNA. MBNA took Mrs G to court for repayment of the debt on her account and got judgment in its favour. It later obtained a charging order over Mrs G's property to secure the debt.

More recently, MBNA sold Mrs G's debt to a third party. Mrs G says that MBNA had no right to do that, and that it should not seek to rely on the charging order which is restricting her from selling her property.

Mrs G also says that MBNA has not provided the necessary copy documentation she has requested. She has complained about various acts and omissions by the third party which bought the debt, which she says MBNA has allowed and has taken no steps to remedy.

MBNA did not accept that it had done anything wrong in its handling of the debt or its subsequent sale to the third party. As things were not settled, Mrs G brought her complaint to this service. With her consent Mrs G's partner (Mr G), who is also the joint owner of the security property, is bringing the matter on her behalf.

An adjudicator investigated the complaint. From the evidence, the adjudicator was satisfied that MBNA had provided Mrs G with a true copy of her agreement. The adjudicator also found that MBNA had corresponded correctly with Mrs G about her account arrears and default.

MBNA confirmed that, once the account is settled, steps would be taken to remove the charging order. The adjudicator clarified that this order did not, in any event, operate to prevent or restrict the sale of the property.

The adjudicator explained that the ombudsman service does not have standing to declare a credit agreement unenforceable at law, and that the matters Mrs G had raised about the third party debt purchaser could not be considered within this complaint about MBNA.

Overall, the adjudicator did not recommend that the complaint should succeed. Mrs G did not agree. Writing on her behalf, Mr G said (in summary):

- There are discrepancies in the various card and reference numbers used by MBNA and by the debt buyer, in records and on Mrs G's credit file. This has added to the complexity of the matter and has made it very hard to understand what is going on.
- He would like the ombudsman service to put some questions to MBNA, and also disputes that the documents provided by MBNA are sufficient to comply with the relevant law.
- Mrs G was not given a chance to argue her case, as MBNA bulldozed the matter through court.

- There are two entries on the card transactions statement in June and July 2000 that arguably took place before the credit agreement was executed. Mrs G cannot be held liable for these transactions, nor for any interest charged on them during the life of the agreement.
- If the account were recalculated to take into account all the points he has made against MBNA, Mrs G would be owed a significant amount of money by MBNA. Mrs G has been caused distress by all this, and that distress continues.
- MBNA should not have allowed further default information to be added by the new debt owner – the adjudicator does not seem to have checked with the Information Commissioner about what happened.
- The charging order is worthless and he repeats that this would prevent the sale of the property, were he to want to sell it.
- He is still not satisfied that the terms and conditions of the agreement allowed MBNA to sell the account; nobody has shown him anything to the contrary. MBNA has also not provided all the documentation that it is required to do under the data subject access request that Mrs G has made.

MBNA also provided additional comments on the issue of the credit file entries, which I reproduce word for word, for Mr G's benefit:

- It may be helpful to explain that the credit reference agencies will report the fact the account was sold to a third party purchaser. Ordinarily, in the case of Experian and Call Credit, the customer will be able to see a 'ghost' entry i.e. the data that was valid (and maintained by MBNA) until such time that the debt was sold. This entry shows no balance and that the debt has been transferred to a third party.
- This record does not contribute to any credit scoring, and only the 'live' entry that the purchaser subsequently maintains would be considered by a potential creditor. Furthermore, creditors will only be able to see the 'ghost' entry when reviewing a credit file manually; however, as indicated earlier, it would not be considered in any credit assessment. There still will be two entries, but one of them is acting as a 'ghost' entry, so any lender will not consider it and it will not contribute to any credit scoring as previously confirmed.

my findings

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

In his representations, Mr G has raised matters going back as far as 2000 when the account was first opened. He argues that, put simply, the documentation MBNA has provided is defective on a number of counts and that this makes the debt unenforceable. He also argues that, as a consequence of all this, MBNA is liable to pay Mrs G compensation and remove the charge over the family home.

But the issue of whether (and how much) money was owed by Mrs G to MBNA under the credit agreement was determined many years ago, when MBNA obtained a court judgment in its favour.

Even if, as Mr G says, Mrs G was not given the opportunity to argue these particular points in court, I am not in a position to review or revise the court order – and I have no standing to overturn it.

Mr G has said that Mrs G may have a moral duty to repay the debt but does not have any legal duty to do so. But, even if there had been no judgment, I cannot declare a credit agreement unenforceable at law – only a court may do that. As it is, MBNA did not sell Mrs G's credit card account to another lender; it sold on a debt, for which it had already obtained judgment.

The court also made an order giving MBNA a charge over the property owned by Mr and Mrs G. I cannot revisit that decision by the court or cancel out the charge; whether or not the charge is worthless would be a matter for the court to decide, in the event that enforcement was attempted.

MBNA has explained that the charge will be removed on payment of the debt. Contrary to what Mr G believes, a charging order does not, of itself, mean a property cannot be sold.

As the adjudicator has explained, the more recent additional complaint that Mrs G has made about the response to the data subject access request cannot be determined in this final decision. I am also unable to consider, within this complaint about MBNA, the acts and omissions of the third party which bought the debt.

I realise that Mr G feels very strongly about this matter. He has taken considerable trouble to set out his interpretation of the various consumer credit provisions that he considers apply. Mr G has also explained that Mrs G has health problems and that the debt is causing her distress, which I was sorry to learn. But, taking everything into account and for the reasons set out in my final decision, I do not uphold this complaint.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G (on behalf of Mrs G) to accept or reject my decision before 16 November 2015.

Jane Hingston
ombudsman