

## **complaint**

Mrs B complains she was mis-sold a card protection policy by MBNA Limited. She says when she complained to MBNA about the mis-sale, MBNA made errors and took aggressive enforcement action which led to her suffering considerable financial loss and distress and inconvenience.

## **background**

MBNA added a card protection policy to Mrs B's credit card. Mrs B says she did not know about the policy until over four years later when she noticed a premium and complained. At this point she stopped making payments to her credit card.

In its final response letter, MBNA said the card protection policy had not been mis-sold because Mrs B would have consented to it and would have received the terms and conditions of the policy and annual renewal letters. However, MBNA said it would refund £40 to Mrs B's credit card as a gesture of goodwill – £36 of late payment fees and £4 of interest – but this was not done due to an administrative error.

Mrs B made a further £36 payment which failed to clear the credit card debt. MBNA then sent Mrs B a letter saying that she had misunderstood its communications and it had not been requesting £36 from her – it had instead been requesting that the full debt be cleared. It explained that the £40 it had said would be refunded had not been and so it would therefore refund all late payment fees and interest – a total of around £80. This showed on Mrs B's statement but a further late payment fee and interest were also shown on the statement. This additional late payment fee and interest meant that a small balance was left on the account.

MBNA communicated with Mrs B with a series of letters, emails and phone calls which advised her that the late payments had been placed on her credit file and said this could lead to registration of a default which could prevent her from gaining credit in the future. Mrs B said this caused her considerable distress and had a significant impact on her financially.

The adjudicator recommended the complaint be upheld and the policy premiums be refunded with interest, plus £150 paid as compensation for the distress and inconvenience. MBNA agreed as a gesture of goodwill. Mrs B did not agree.

MBNA sent two further default notices to Mrs B following the adjudication and later a letter saying a default had been registered. The adjudicator reviewed these notices and further evidence submitted by Mrs B and suggested a revised figure of £350 as compensation for the distress and inconvenience caused. MBNA did not agree. Also, Mrs B did not think £350 was enough to compensate her.

Mrs B says MBNA's actions have caused her numerous losses and says MBNA has acted in breach of various statutes and codes, such as the Data Protection Act and the Lending Code, in providing information to the credit reference agencies about a

debt that was in dispute. She also claims MBNA has made defamatory statements about her to the credit reference agencies and has harassed her in trying to collect the debt. Mrs B has submitted full details of her claimed losses.

### **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

#### *the sale*

My role as an ombudsman is to consider whether MBNA has done anything wrong – both in terms of the sale and in terms of its actions since. If it did, I can then consider the loss which flowed from any wrongdoing and what needs to be done to put Mrs B back into the position she would have been in but for the wrongdoing.

MBNA's customer notes simply say the card protection policy was sold after a verbal discussion. Although it seems as though Mrs B did consent to the card protection policy, there is no call recording of the sale and no evidence that the terms and conditions of the policy were sent to Mrs B. Mrs B says she had a similar policy with a different bank and so would not have chosen to take this policy out. I am persuaded by this evidence. I am therefore not persuaded that MBNA gave Mrs B clear, fair and not misleading information to put her in a position to make an informed choice whether to purchase the card protection policy. Had it done so, I consider Mrs B would not have taken out the policy.

#### *the later debt enforcement actions*

I have carefully considered MBNA's actions since the sale of the policy. I am not persuaded that MBNA acted unreasonably when it first pursued Mrs B for her credit card debt and updated her credit file to reflect the late payments. I am satisfied that MBNA thought the debt was legitimately owed and so it acted correctly in telling Mrs B how much was owed on the account. I am also satisfied that it clearly set out the consequences of not paying the amount owed, and that it gave Mrs B sufficient information – with enough notice – to enable her to mitigate any loss by paying the debt.

I am, however, persuaded that there were shortcomings in MBNA's later actions. Most notably, I agree with Mrs B that MBNA acted unreasonably when it sent her two default notices for the debt one month after receiving the adjudicator's view that the card protection policy had been mis-sold. This is particularly the case as the compensation recommended at that time by the adjudicator would have cleared the credit card debt.

*appropriate redress*

Having concluded that there were shortcomings in MBNA's actions – both at the time of the sale and since – I need to consider what compensation is required to put Mrs B back into the position she would have been in but for those shortcomings.

In relation to the card protection policy premiums paid, I require MBNA to refund these together with interest at a rate of 8% simple per year.

I note that Mrs B says interest of 8% simple will not compensate her for all her loss. Where a consumer has been deprived of money, our usual approach is to tell the business to pay interest at the statutory rate, which is currently 8% simple per year. I have carefully considered Mrs B's arguments as to why this produces an unfair result in her case. I note before the last premium charged, she frequently paid off her credit card balance meaning that she was paying no interest on the premiums. In fact, she even had a positive balance on the account for a significant period of time.

In relation to the last premium paid, although this did incur interest at the credit card rate, MBNA has already refunded the majority of that interest. Further, the statutory rate of 8% simple takes account of current interest rates. Overall I am satisfied that the statutory rate of 8% simple per year is a reasonable approximation in the circumstances of this case.

Mrs B has detailed a number of consequential losses she has suffered as a result of MBNA's actions. I note the full details of the losses, but in the circumstances, I cannot say with certainty that any of them were either directly connected to the shortcomings in MBNA's actions or of the type that MBNA could reasonably be expected to have foreseen. In these circumstances, I do not consider that it would be appropriate for me to make awards against MBNA in respect of these claimed losses.

I note Mrs B's request for compensation to be provided for the cost and time she has spent in pursuing her complaint. In this case it is clear to me that Mrs B has spent considerable time in dealing with the complaint, and experienced inconvenience above what I would normally expect to be the case, particularly in light of her circumstances. I have taken account of this, although it is important to note that our awards for this are generally modest.

I have given careful consideration to the £350 total compensation the adjudicator recommended for distress and inconvenience. An award of £350 is considered by this service to be significant and is in line with awards made in cases of a similar nature. And I consider £350 to be fair and reasonable in the circumstances of this complaint, although I appreciate that it is far less than Mrs B wishes to claim. On this point, whilst I am satisfied that my conclusion is in line with the usual approach of our service, Mrs B should be aware that a court may assess her complaint differently and the option to reject this decision and to go to court is still open to her.

### **my final decision**

My final decision is that I uphold this complaint and require MBNA Limited to:

- A. Refund the card protection policy premiums paid by Mrs B together with interest on each premium at a rate of 8% simple per year (less any tax properly deductible) from the date it was paid to the date the compensation is paid.
- B. Refund the late payment charge that has not already been refunded – together with the interest actually charged on that charge.
- C. Pay Mrs B £350 for the distress and inconvenience caused.
- D. Remove any defaults or other adverse information placed on Mrs B's credit file as a result of this dispute about the card protection policy.

Laura Layfield  
**ombudsman**