

## **complaint**

Mr B's complaint is about a payment protection insurance (PPI) policy sold to him in February 2000 by MBNA Limited.

MBNA has agreed it mis-sold the policy to Mr B. Mr B says MBNA hasn't fully compensated him for the sale of the policy.

## **background**

In December 1994 Mr B opened a credit card account with MBNA. And in February 2000 a PPI policy was added to the account to protect Mr B's monthly repayments. In July 2005 the PPI policy was cancelled.

In 2010 Mr B complained to MBNA about the sale of the policy. And from February 2010 he stopped making his monthly credit card repayments. MBNA agreed to uphold the complaint about the sale of the PPI and in September 2010 it made a payment of £5,073.61 to Mr B's credit card account. This was made up of a refund of premiums paid (£4,921.93) plus interest of £151.68.

Mr B wasn't happy with what MBNA had done to put things right, so he asked us to step in.

In July 2011 MBNA paid Mr B further compensation. It paid £2,656.06 to Mr B's credit card account, which cleared the outstanding balance. And MBNA also paid Mr B £16,003.80 by cheque.

So between September 2010 and July 2011 MBNA paid Mr B a total of £23,733.47 to compensate him for the mis-sale of the PPI policy. This was broken down as follows:

- Refund of PPI premiums- £4,921.93.
- Interest charged due to the PPI being added to the account- £15,376.55.
- Interest to compensate Mr B for the time he'd been out of pocket- £3,434.99.

Mr B checked his credit file and was unhappy that MBNA had recorded a default against his account. The credit file also showed there was an outstanding amount due on the account. So he complained to MBNA about this.

MBNA said it wouldn't remove the default as it was an accurate record and reflected the fact that Mr B hadn't been making any payments to the account. But MBNA did agree that there was no longer any outstanding balance as it had used some of the PPI compensation to clear the account. MBNA corrected this and paid Mr B £25 because of its error.

Mr B then made a further complaint to us about the default MBNA had recorded on his credit file. And in March 2014 one of our ombudsmen issued a final decision on this matter. The ombudsman found that MBNA had acted correctly and the default was a true reflection of how Mr B had run his account.

Mr B remained unhappy as he didn't think MBNA had returned him to the position he'd be in if the PPI hadn't been sold to him. In particular Mr B said all MBNA had done was to refund the PPI premiums and interest, but it had ignored penalties and charges he said he'd paid because of the PPI.

In 2015 we asked MBNA about the way it'd worked out Mr B's compensation. MBNA told us it'd looked at Mr B's account history. And it told us there was only one over-limit charge that it felt was caused by the PPI policy being added to the account.

But MBNA also ran a new calculation using a new more accurate calculator than it used in 2011. And MBNA told us the new calculation showed the compensation it should've paid Mr B was £22,352.96. MBNA told us it paid Mr B £23,733.47 between September 2010 and July 2011. MBNA said it had overpaid Mr B by £1,380.51 so it wouldn't refund the one over-limit charge it said was caused by the PPI policy.

Mr B remains unhappy with how MBNA dealt with his complaint and doesn't agree that MBNA has put him in the position he'd be in if he hadn't been sold the PPI. Mr B asked for an ombudsman to look at his complaint.

In February 2016 I issued my provisional findings on Mr B's complaint and invited both parties to comment and provide any additional evidence for me to consider. A copy of my provisional decision is attached and forms part of this final decision.

My provisional findings were that I didn't intend to direct MBNA to do anything more to put things right.

- I wasn't going to look again at the issue of the default as another ombudsman had already issued a final decision on that matter.
- I thought the most recent calculation MBNA had carried out to find out how much it owed Mr B was fair.
- I looked at all the charges Mr B had paid. I noted that Mr B had paid late charges, over-limit fees and late payment charges both before and after PPI was added to his account. And overall didn't think all the charges were made because of the PPI.
- I said that even if some of the over-limit fees were caused by the PPI I still wouldn't direct MBNA to refund them because I thought MBNA had previously overcompensated Mr B by £1,380.51.

MBNA has said it has nothing further to add.

Mr B has told us he disagreed with my provisional findings.

Mr B asked for a copy of the transaction history showing all the fees he was paid and a copy of MBNA's latest compensation calculation. I can see copies of these were sent to Mr B shortly after my provisional decision was sent. But I note Mr B had already seen these documents before.

Mr B has told us that if he hadn't been sold PPI then the cumulative saving would have meant that he wouldn't have gone over his limit at all and wouldn't have incurred the over-limit fees.

Mr B says credit card businesses should reject transactions that would take consumers over their credit limit, instead of allowing the transaction to go through and then making a charge.

## **my findings**

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

We've set out our general approach to complaints about the sale of PPI on our website and I've taken this into account in deciding Mr B's case.

I've thought about Mr B's suggestion that credit card businesses shouldn't be allowed to authorise transactions that would take the account over its limit. But I think this is a wider point outside the issues that I'm looking at as part of this complaint. I can see situations where consumers might not want their card provider to automatically reject a transaction. And in any event sometimes transactions don't get processed straight away, for example if the card is used abroad.

Mr B says he wouldn't have gone over his limit at all if he hadn't been sold PPI. I can see that MBNA refunded total PPI premiums of £4,921.93. So Mr B says that if these hadn't been added, it follows that his balance would've been substantially less at the time he incurred the over-limit fees.

But this assumes that Mr B simply would've used the card in exactly the same way but without the PPI premiums being charged. And I see that Mr B actually spent over his limit nine times and incurred over-limit fees *before any PPI was added to his account*.

So I think it's too simplistic to say that without PPI Mr B would've spent £4,921.93 less on his credit card. From what I've seen Mr B regularly used his credit card and spent up the limit and sometimes exceeded it. And I think he likely would've done the same even if the PPI wasn't sold to him.

I've read Mr B's reply to my provisional findings carefully. But having done so I'm not persuaded to change the findings I set out in that decision.

## **my final decision**

For the reasons set out above, and in my provisional decision I think MBNA Limited has fairly compensated Mr B for the mis-sale of the PPI policy. So I'm not going to direct MBNA Limited to do anything else to put things right.

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

Steve Thomas  
**ombudsman**

### **copy of my provisional decision**

#### **complaint**

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the PPI and in September 2010 it made a payment of £5,073.61 to Mr B's credit card account. This was made up of a refund of premiums paid (£4,921.93) plus interest of £151.68.

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Mr B then made a further complaint to us about the default MBNA had recorded on his credit file. And in March 2014 one of our ombudsmen issued a final decision on this matter. The ombudsman found that MBNA had acted correctly and the default was a true reflection of how Mr B had run his account.

Mr B remained unhappy as he didn't think MBNA had returned him to the position he'd be in if the PPI hadn't been sold to him. In particular Mr B said all MBNA had done was to refund the PPI premiums and interest, but it had ignored penalties and charges he said he'd paid because of the PPI.

In 2015 we asked MBNA about the way it'd worked out Mr B's compensation. MBNA told us it'd looked at Mr B's account history. And it told us there was only one over-limit charge that it felt was caused by the PPI policy being added to the account.

But MBNA also ran a new calculation using a new more accurate calculator than it used in 2011. And MBNA told us the new calculation showed the compensation it should've paid Mr B was £22,352.96. MBNA told us it paid Mr B £23,733.47 between September 2010 and July 2011. MBNA said it had overpaid Mr B by £1,380.51 so it wouldn't refund the one over-limit charge it said was caused by the PPI policy.

Mr B remains unhappy with how MBNA dealt with his complaint and doesn't agree that MBNA has put him in the position he'd be in if he hadn't been sold the PPI. Mr B asked for an ombudsman to look at his complaint.

### **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.

#### Mr B's credit history

Part of Mr B's complaint is about the default MBNA registered on his credit history. Mr B says this wouldn't have happened if he hadn't been sold the PPI. But this part of Mr B's complaint has already been dealt with by another ombudsman under a different reference number. That ombudsman issued a final decision on the matter so I won't look again at the issue of the default in this decision.

### MBNA's calculations

Where a PPI policy has been mis-sold I'd normally expect a business, as far as is practical, to put a consumer in the position they'd be in if the PPI policy wasn't sold to them. To do this I'd expect MBNA to work out how much extra Mr B paid because the PPI was added to his credit card account. And I'd expect MBNA to pay interest at 8% simple to compensate him for the time he'd been out of pocket.

Looking at the latest calculations made by MBNA I can see it's refunded all the PPI premiums Mr B was charged. And I can see it's refunded all the interest he was charged because the PPI was added to his account. MBNA has also paid Mr B 8% per year simple interest for the periods when the account would've been in credit but for the PPI.

This is what I'd expect MBNA to have done and I've not seen anything that makes me think the most recent calculation MBNA carried out isn't fair.

From what I've seen, the main reason Mr B thinks MBNA hasn't fully compensated him is because he says he was charged fees caused by the PPI.

I think it's fair that MBNA should refund charges and fees Mr B paid, *but only if they were caused by the PPI being added to his account*. MBNA has given us a breakdown of all the transactions on Mr B's account. So I've looked at this breakdown. In particular I've looked to see if any of the charges on Mr B's account might've been caused by the PPI policy.

### charges added to Mr B's account.

Mr B says MBNA hasn't properly compensated him because it hasn't refunded the charges he says he paid because of the PPI. On the other hand MBNA says it's identified only one over-limit fee that it says was caused by the PPI policy. I've thought about this and I've looked carefully at a list of all the transactions on Mr B's credit card account from July 1995 until July 2011.

### *late payment charges*

I can see Mr B incurred many late payment charges on his account. Between February 2000 and July 2005 when the PPI was active on his account, I counted 22 late charges. These are charges MBNA made when Mr B paid his monthly bill late. And I can see that in the years *before* the PPI was added to the account Mr B paid around 15 of these charges. So it seems to me that Mr B sometimes made his monthly credit card payments late. And this happened both before and after the PPI was sold to him. So I don't think the PPI policy caused Mr B to incur these late payment charges. I think it's simply the case that Mr B sometimes paid his monthly statement late. So I don't intend to ask MBNA to refund these charges.

### *insufficient funds*

From what I can see Mr B usually paid his credit card account by cheque. On three occasions the cheques were returned due to insufficient funds and MBNA charged Mr B a fee because of this. I can see that one of the times this happened was before the PPI policy was added to the account. In my view it was Mr B's decision to write MBNA cheques from an account which had insufficient funds in it. And I don't think it'd be fair to blame the addition of the PPI policy for this. So I'm not intending to ask MBNA to refund these charges.

### *over-limit charges*

These are fees Mr B was charged because the balance on his credit card went over his agreed credit limit. Over the lifetime of the account I counted around 45 over-limit charges. MBNA has told us that only one of these was caused by the PPI policy being added to Mr B's account. So I've thought

about whether Mr B would've gone over his credit limit and been charged these fees if he hadn't had the PPI premiums added to his monthly statements.

I've again looked at the way Mr B ran the account *before* the PPI was sold to him. And I see he was charged nine times for spending over his limit between 1995 and 2000. These charges can't have been caused by the PPI policy. They were caused because Mr B used the credit card up to its limit and sometimes exceeded it. It follows that I can't be sure whether Mr B would've continued to do this even if the PPI hadn't been sold to him.

Mr B did pay around 30 over-limit charges between February 2000 and July 2005 when the PPI was active on his account. And I can see these added up to around £660. But I don't think all of these are solely due to the PPI premiums being charged to his account.

For example in June 2002 Mr B was charged an over-limit fee. The balance on his account was then £11,333.30. In the month leading up to that he was charged a PPI premium of £66.50. But Mr B also made six cash withdrawals during the month totalling £1,250. So in my view it's more likely the cash withdrawals caused Mr B's account to go over its limit rather than the PPI premium.

But in any event I see MBNA has paid Mr B a total of £23,733.47 in compensation for the sale of the policy. I've looked at the most recent calculation carried out in 2015 and I think it's fair. And this calculation shows MBNA should've paid Mr B £22,352.96. So I think MBNA overpaid Mr B by £1,380.51.

Even if I were to think that *some* of the over-limit fees were caused by the PPI policy, I don't think the extra compensation would exceed the £1,380.51 that MBNA has already overpaid Mr B.

So it wouldn't be fair for me to tell MBNA to refund those fees.

#### **my provisional decision**

For the reasons set out above, but subject to both parties' responses to this provisional decision, I currently think MBNA Limited has fairly compensated Mr B for the mis-sale of the PPI policy. And I'm not intending to ask MBNA Limited to do anything else to put things right.

Steve Thomas  
**ombudsman**