complaint

Mr M has complained that he was mis-sold two payment protection insurance ("PPI") policies alongside two credit cards he had with MBNA Limited ("MBNA").

background

Mr M took out two credit cards with MBNA, one in 1998 and one in 2003 – he took out PPI with both of them to protect his repayments. PPI was cancelled on both accounts in July 2009.

Mr M complained to MBNA that PPI had been mis-sold and in September 2012 MBNA upheld his complaints. It made him two offers of compensation, one for each PPI policy. It offered him £7,009.05 for the 1998 card and £3,886.47 for the 2003 card.

Mr M didn't think MBNA had offered enough compensation. He said it hadn't worked out his compensation in the way we'd expect it to.

One of our adjudicators looked at MBNA's offers and thought they were fair. But Mr M disagreed, so the complaint was passed to me for a decision.

In April 2016 I issued a provisional decision on Mr M's complaint. A copy of that decision is attached and forms part of this final decision.

My provisional findings were that I thought MBNA's offers were broadly fair, but I thought it needed to look again at the way it worked out some of the compensation. I thought MBNA needed to change the way it dealt with some of the payments that Mr M had made that it had said were minimum payments. And I asked MBNA to send me updated offers in response to my provisional decision.

Mr M responded to my provisional decision. He didn't agree with what I'd said and asked that I tell MBNA to look at his compensation again and recalculate his offer using the method it used to use. He also sent me a report by a university lecturer, which sets out her concerns with the way different businesses work out PPI compensation alongside credit cards.

MBNA responded to my provisional decision as well. It didn't disagree with what I'd said and confirmed that Mr M had been paid some compensation in October 2012.

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.

I'm not going to change the conclusions from my provisional decision.

I've read the university lecturer's report. The report doesn't deal with Mr M's case, but it sets out her wider concerns with the way businesses work out PPI compensation. I think many of the lecturer's arguments are the same or similar to Mr M's, so I won't comment on specific parts of the report in my decision.

Mr M has two main responses to my provisional decision - that the way MBNA assumes he would've made payments to his accounts without PPI isn't fair and that MBNA hasn't used the right interest rates when working out compensation.

And Mr M has asked me to tell MBNA to use a method that it used to use to work out compensation. He's said this would address his main complaint points. Mr M has sent through a breakdown of what he thinks the compensation would look like using the older method on his 1998 card. He says MBNA should refund to him £9,006.66 in interest as he thinks this was caused by PPI. But he was only charged £7,057.58 in interest on the card in total on all purchases, balance transfers and PPI. MBNA can't refund more than Mr M was charged, so it follows I don't think this method of working out compensation is fair or accurate.

MBNA's payment assumptions

Mr M has said it's not fair for MBNA to assume he would've made a different payment if he didn't have PPI. And Mr M has said MBNA hasn't followed the rules he says it should in working out compensation.

I think I should be clear that the rules and guidance set out by the Financial Conduct Authority are for businesses to follow. And as I explained in my provisional decision, the guidance Mr M is referring to includes an example – it doesn't set out the only way a business can work out compensation. In any event, the rules and guidance are something I have to take account of. But I don't have to decide whether MBNA followed those rules. I have to decide whether, taking everything into account, MBNA has acted fairly.

I've set out my provisional decision why I think MBNA's way of working out compensation is fair and I still think it's fair for the same reasons.

MBNA has assumed that Mr M would've made the same *type* of payment if he made a minimum payment or if he paid off more than his 'reconstructed balance' without PPI in any month. So it's assumed he would've made a smaller payment in these circumstances. Mr M says this is a way of MBNA reducing the amount of interest refunded to him.

There are a number of ways a business might work out compensation and a number of assumptions they have to make. It's possible that different methods could lead to different amounts of compensation, but still be fair. In short, there isn't a set way that every business must follow in working out compensation, and I have to look at the circumstances of every case and say whether I think what a business has done is fair.

In this case I accept that MBNA could've refunded a larger amount of the interest that was charged if they used a different way of working out compensation. But overall, when I look at the amount that Mr M was charged for PPI and interest as a whole, I think MBNA are refunding a proportionate amount of interest. It follows I think that's fair and gives a more accurate figure for compensation than the other methods Mr M has suggested MBNA follow.

the interest rate MBNA has used

Mr M doesn't think MBNA has used the right rate of interest in working out his compensation. As I explained in my provisional decision, MBNA refunds a proportion of the interest charged in any given month that it says was caused by PPI. It does this by using the actual interest charged on a customer's actual balance. Mr M says MBNA should use 22.9% as an average rate of what was charged for purchases.

I think MBNA's assumption is a fair one to make. As I said before, I think MBNA has refunded a proportionate amount of the total interest that was actually charged. I don't think it would be fair to assume Mr M was always charged 22.9% on the PPI on his account because that wasn't the actual rate he was charged.

And it wouldn't take into account the payments Mr M made to his credit card accounts or how these payments reduced different parts of his outstanding balances. Overall, I think the way MBNA has worked out Mr M's compensation on the aggregate of his credit card balance, is fair, reasonable and practicable.

has MBNA followed my provisional decision?

MBNA has sent in a breakdown for the 1998 card. I don't think it has removed two 'minimum' payments from January and April 1999 that I think it should. So MBNA should assume Mr M would've made the same payments in these months without PPI.

And there are a few months where the minimum payment MBNA has assumed Mr M would've made without PPI is under £5. But I don't think that could've happened as the smallest payment he could've made in the circumstances was £5. So I think MBNA needs to assume Mr M would've paid £5 in April and May 2008 for the 1998 card.

Otherwise I think the way MBNA has worked out compensation is fair. So MBNA needs to work out the difference between what it paid Mr M in October 2012 and what it would've paid him if it had worked out the compensation in the way I told it to on both cards. It then needs to add 8% per year simple interest on that difference and pay that to Mr M.

my final decision

For the reasons set out above, I think the way MBNA Limited has worked out its offer is fair.

I direct MBNA Limited update its offer as I've set out above and pay Mr M any further compensation due.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 July 2016.

Mark Hutchings
ombudsman

copy of provisional decision

complaint

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background

Mr M took out two credit cards with MBNA, one in 1998 and one in 2003 – he took out PPI with both of them to protect his repayments. PPI was cancelled on both accounts in July 2009.

Mr M complained to MBNA that PPI had been mis-sold and in September 2012 MBNA upheld his complaints. It made him two offers of compensation, one for each PPI policy. It offered him £7,009.05 for the 1998 card and £3,886.47 for the 2003 card.

Mr M didn't think MBNA had offered enough compensation and that it hadn't worked it out in the way we'd expect it to.

One of our adjudicators looked at MBNA's offers and thought they were fair. But Mr M 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.

Mr M has put forward a large number of arguments for me to take into account. I can assure him I've read everything he's sent in, but I'm not going to respond to every point he's raised. The Financial Ombudsman Service is an informal dispute resolution service, so I've concentrated on what I think are the material points I need to consider to come to a fair and reasonable decision.

Mr M has complained about two PPI policies. As the issues about the compensation are the same for both policies, I'm going to deal with them together in this decision.

MBNA has agreed to work out compensation 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 Mr M. But I do need to consider whether MBNA's offers are fair.

I think that MBNA's offers are mainly fair and I'd like to explain why.

I'd expect that when a business has mis-sold PPI, it puts things right by putting the consumer in the position they would've been in now if they hadn't taken out PPI. I'd expect it to refund the premiums paid for PPI, any interest paid on the premiums and any further charges caused by the PPI.

If, when this is taken off, someone paid more than they needed to, I'd expect a business to pay interest on the extra amount for the time they are out of pocket at the rate of 8% a year simple interest.

When working all of this out a business has to make some assumptions about what a consumer's balance might've looked like each month without PPI. So I need to consider whether those assumptions are fair.

Mr M has pointed to two things he says MBNA must follow when working out compensation – the Financial Services Authority's (as it was then) Policy Statement 10/12 ("PS 10/12") and our website. Mr M has pointed to Appendix 2, example 6, of PS 10/12, and he says that MBNA should work out compensation in the same way as in this example. And he says MBNA hasn't followed the approach we set out on our website.

I've looked at PS 10/12, example 6. I think it's a simplified example of how a business could work out compensation for a mis-sold PPI policy alongside a credit card. It's an example that shows a way that a business can approach compensation. But it doesn't say it's the only way a business may approach compensation. And I don't think it means that a business can't follow a different method.

I've also looked at our website. It sets out what we think would be a fair way to calculate compensation. It doesn't set out rules or regulations that businesses must follow. And it says our approach was based on cases we'd seen at that point, but it might change when we look at more cases.

And different businesses work out compensation in different ways. Not every credit card account works in exactly the same way and there isn't a set way of calculating compensation that every business has to follow. In every case I must consider what a business has done and whether its offer is 'fair and reasonable' in the circumstances of the individual complaint.

Mr M has done his own calculations showing how much compensation he'd be owed if MBNA followed the example shown in PS 10/12 exactly. For the 1998 card he's worked out MBNA should pay £6,215.50 in interest charged because of the PPI added to the card. But he was only charged £7,057.58 in interest on the card in total – so he thinks 88% of all the interest he was charged was *caused* by PPI. But the cost of PPI was just under 8% of the total spend on Mr M's card. And I don't think it's fair to say that less than ten percent of the total Mr M spent on his credit card could've caused him to overpay interest by almost ninety percent.

And for the 2003 card Mr M thinks MBNA should pay £1,985.48 for the extra interest caused by PPI. But Mr M was only charged £1,978.88 in interest on this card in total – less than Mr M thinks he should get back. Again, I don't think it would be fair to tell MBNA to follow Mr M's approach as I think it over estimates the amount of interest charged because of PPI.

But Mr M has said some of the assumptions MBNA has made aren't fair when it's worked out compensation. He doesn't think MBNA has used the right rate of interest when working out the amount of credit card interest caused by PPI.

And MBNA has assumed Mr M would've made the same payments he actually made, unless he made the minimum payment or paid his balance in full. Here it's assumed he would've made the same *type* of payment. But, as he would've owed less without PPI, it's assumed he would've paid less. Mr M doesn't think that's fair.

interest rates

Mr M doesn't think MBNA has used the right rate when working out how much interest he was charged on the PPI premiums added to his account. He has provided several screen shots he got from MBNA showing that he was charged different rates. Sometimes he was on a low 'promotional' rate and sometimes he was charged a higher rate. And sometimes different parts of his outstanding balance were charged interest at different rates. Mr M has suggested that MBNA use an 'average' rate or 22.9% per year.

MBNA has Mr M's actual records, so it knows every month what his balance was, how much he paid to the card, how much he spent and how much interest he was charged. MBNA charged interest daily, but using the information it has, it's worked out the average interest rate per month. Using this rate, it's then worked out how much interest was charged on the extra part of the balance caused by PPI.

I think this is a fair way to look at the interest. The rules a business must follow when working out compensation says it should *as far as is practicable*, put the consumer in the position they'd have been in if they hadn't taken out PPI. As I've said before, a business must make some assumptions. Here I think MBNA's assumptions are fair, reasonable and practicable.

In some cases, for example where a consumer had a low balance transfer rate, this might lead to a slightly lower rate for PPI than they paid. In other cases, for example if someone used their card a lot to take out cash, this might lead to a slightly higher rate for PPI. But I think MBNA's method is simple and takes into account the amount of interest a consumer was actually charged.

I don't think it would be fair or practicable to ask MBNA to go back and breakdown every payment ever made in the way Mr M is saying it should – it would be overly complex and not all the information is available. And I don't think it would be fair to say MBNA should use a single rate of 22.9% when that's not the rate Mr M was actually charged.

Mr M has pointed to a month on one of his credit card accounts where he says MBNA hasn't worked out enough credit card interest. I've looked at this month, as well as the rest of MBNA's calculation. It's possible in this month MBNA have underestimated the amount of interest *caused* by PPI. But looking at this month in particular, I think any change would be small (under a pound). And I think that the interest worked out in other months may be in Mr M's favour.

So, in the round, I think MBNA has worked out interest in Mr M's case fairly.

minimum and full payments

A business has to rework the credit card to find out what it would look like if the consumer hadn't taken out PPI. There are a number of ways a business can do this and a number of assumptions it can make when looking at how a consumer would've acted.

In PS10/12, example 6, it was assumed that a consumer would've made exactly the same payments to their card whether or not they had PPI. I think that's a fair approach to take. But that doesn't mean that there aren't other approaches that might also be fair. We've set out on our website some other approaches that we've seen businesses take that we also think are fair.

MBNA says that consumers wouldn't have always made the same payments. It thinks a consumer wouldn't have normally paid back more than they needed to to clear their balance. If a card has run for some time, the difference between the balance with PPI and the assumed balance without PPI can be quite large. MBNA says, if the assumed balance without PPI was less than the amount a consumer actually paid, when it reruns the card it should assume the consumer would've actually paid the smaller amount that was needed to clear the balance.

So, for example, Mr M's balance in October 1999 was £3,525.15. The following month he made a payment of £3,470.50. MBNA has worked out that if he didn't have PPI on his account he would've owed £3,139.64. So MBNA says Mr M wouldn't have made the same payment, he would've paid £330.86 less to clear his balance. And it set up a running total of the extra amounts Mr M paid and it's added 8% per year simple interest on this extra amount. I think this assumption is a fair one to make. I don't think Mr M would've made a payment to MBNA of more than he actually owed. And MBNA has assumed he would've had that extra money in his pocket. So it's refunding that with 8% per year simple interest to compensate him for not being able to use that money.

Mr M has pointed to our website where we talk about credit card compensation. He notes that this is headed 'consumers who pay their credit card balance in full *each month*' (emphasis my own). So he says MBNA can only make its assumptions if he paid off his balance every month. I don't think that's right. As I said before, the approach we set out on our website was based on cases we'd seen at that point, but it might change once we'd seen more cases. Our website doesn't set out every approach a business can take, but just some of the ones that we'd seen at the time and thought were fair.

I can see that Mr M often made minimum payments and some months he cleared his balance. Based on what I've seen I don't think he would've paid back more than he needed to, so MBNA can take this into account even though he didn't pay off his balance every month.

Similarly, MBNA has also said that if a consumer made a minimum payment, it thinks they would've make a different, smaller minimum payment on the lower balance without PPI.

I've looked at how Mr M ran both his accounts. I think he tended to make lots of minimum payments before then paying off both his accounts in full. I think it's fair to assume he would've run his accounts in the same way without PPI. It follows I think MBNA can assume he would've made a smaller minimum payment on a smaller balance.

Mr M has said that some of the payments MBNA have said are minimums aren't actually minimum payments. MBNA has told us that Mr M had a direct debit set up between July 1999 and August 2009 to pay the minimum payment due. I've looked at all the payments made after July 1999 on both accounts and I think MBNA has correctly identified minimum payments. But in a few instances Mr M paid £5 which was an absolute minimum payment – he couldn't have paid less. So in these cases I don't think it's fair to assume he would've paid less than £5 if he'd have owed less without PPI – he could've only paid the £5 minimum. So I think MBNA shouldn't treat these payments in the same way – it should assume Mr M would've made the same payment.

On Mr M's 1998 card MBNA has said there are five payments before July 1999 that were minimum payments. I've looked at all five payments and I think some probably are minimum payments, but some might not be. In this case I think the simplest thing for MBNA to do is not treat any of Mr M's payments before July 1998 as minimum ones and assume he would've made exactly the same payments.

Mr M says MBNA has made these assumptions to increase the 8% per year simple interest in his offers and to lower the amount of credit card interest he'd get back that was *caused* by PPI. He doesn't think that's fair.

But Mr M fell into financial difficulty and MBNA stopped charging him interest from August 2009 onwards, even though he had a balance on both of his cards. So, as he wasn't charged interest after then, he wouldn't get a refund of any interest caused by PPI after then. But MBNA have continued to add 8% per year simple interest on the extra payments he made after 2009. So I think there's every chance Mr M is actually better off because of the way MBNA has worked out his compensation.

what MBNA needs to do to put things right

For the reasons set out above I think MBNA's offers are broadly fair. But I think it needs to make new offers taking into account what I said above about minimum payments. So I don't think it should assume Mr M would've made any different payments before July 1999 or if he only paid £5.

MBNA should then update Mr M's offers and pay him compensation, with the 8% per year simple interest updated to when he actually gets paid.

If MBNA has already paid Mr M compensation it should run its calculation to the same date he was actually paid. It should then pay him the difference between what he was paid and what he would've been if compensation had been worked out in the way I've told it to. MBNA should then add 8% per year simple interest on that difference from when he was previously paid to now.

I'd like MBNA to confirm whether Mr M has been paid before and to send me its new offers in response to this provisional decision.

my provisional decision

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

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

Mark Hutchings
ombudsman