

The complaint

Mr A has complained that MBNA Limited mis-sold him a credit card payment protection insurance (PPI) policy.

What happened

Mr A took out the PPI in 1998 at the same time as applying for the credit card.

MBNA rejected Mr A's complaint about the policy being mis-sold. But it did offer redress in relation to unfair commission and profit share. It sent him a cheque for £132.90 in October 2020 which Mr A returned. MBNA then renewed its offer in a letter dated 7 December 2020, updating the amount to £133.67, saying that payment would be made within 28 days.

Our investigator didn't uphold the complaint. Mr A disagrees with the investigator's opinion and so the complaint has been passed to me for a decision.

What I've decided – and why

I've considered 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 this case.

I've decided not to uphold Mr A's complaint and I'll explain why.

Mr A's says he was pushed to take out the policy and it was inferred as a demand.

I've seen a copy of the application form for the credit card. This was a postal application form that Mr A would have completed at home and then sent back. So there would have been no direct input from any member of MBNA staff at the point that the application was being completed.

The form has a separate section for PPI. It provides a brief description of the cost and benefits of the policy. There are 'yes' and 'no' boxes to be ticked to either request or decline the cover. Mr A has ticked the 'yes' box.

I have no doubt that Mr A has provided his genuine recollection of events. But the sale was a long time ago and so it would not be surprising if his memory has faded.

Given the wording and layout of the form, I'm satisfied that the optional nature of the PPI was made clear. It seems to me that Mr A decided to buy the PPI, knowing he didn't have to, even if he no longer remembers doing so.

MBNA didn't advise Mr A to take out the policy, so it didn't need to ensure that it met his needs. But it did need to provide him with sufficient information for him to make an informed choice about whether or not the policy was right for him.

I think Mr A would have known something about the policy – that it would cover his monthly credit card payments if he was unable to work due to accident, sickness or unemployment – because I doubt he'd have decided to buy it without knowing anything at all about it. And I think he would have known he'd have to pay something for it as the application form sets out the cost as 68p per £100 of the statement balance.

Mr A is unhappy about certain questions our investigator asked and wonders how he is supposed to answer questions about matters from over 20 years ago without prejudicing himself. But there are no trick questions here. Obviously he wouldn't remember everything from that time, but he just needed to answer to the best of his ability, as he has done. All our investigator was trying to do, as far as possible, was to establish what his circumstances were in 1998.

Where the evidence is incomplete, I base my decision on the information that we do have, as well as what I consider is most likely to have happened.

Mr A can't remember if his employer would have provided sick pay. That doesn't really matter because, regardless of whether they would have or not, the PPI would have paid out in addition to any sick pay and potentially for longer than Mr A would have received full pay for.

Mr A has clarified that he had no savings at the time. As he had no other means to continue paying his credit card bill if he wasn't working, the PPI could have proved useful, especially as he has said that times were financially difficult.

Mr A did have a medical condition that he'd had since childhood. From what he's said, this was having minimal impact on him by the time he reached his 20s, so it's unlikely he'd have thought this condition might lead to him having a prolonged period off work such that he might need to make a claim on the policy.

It's possible that MBNA didn't provide as much information about the policy as it should have, particularly about the things that it didn't cover. But Mr A's circumstances at the time do not suggest to me that the exclusions and limitations of the policy would have restricted the cover for him to such an extent that he would not have wanted to take it out.

As I have concluded that Mr A most likely had an interest in the policy and decided to buy it, I don't think that further information would have caused him to change his mind.

This means that MBNA doesn't have to pay back all of the cost of the PPI to Mr A. But MBNA has offered to pay back *some* of the cost of the PPI to him because:

- When the policy was sold, MBNA expected to get a high level of commission and profit share (more than 50% of the PPI premium) – so it should have told A about that. Because MBNA didn't tell him, that was unfair.
- To put that right, MBNA has offered to pay back the amount of commission and profit share that was above 50% of the PPI premium – and I think that is fair in this case.

My final decision

The PPI policy was not mis-sold and so MBNA Limited does not have to pay back all of the cost of the PPI to Mr A. But it has offered to pay back any commission and profit share it got that was more than 50% of the PPI premium, in accordance with FCA guidelines, which is fair and reasonable. MBNA Limited should make this payment now if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 9 February 2024.

Carole Clark
Ombudsman