

complaint

This complaint against MBNA Limited ('MBNA') concerns the sale of a regular premium, monthly paid payment protection insurance (PPI) policy attached to a credit card and taken out in December 2004. Mr R says that the policy was mis-sold.

my findings

I would like to confirm that in reaching my decision I have taken into account the law, guidance and good industry practice that I consider to be relevant to reaching a fair and reasonable outcome to this dispute.

The questions I need to consider in a case like this are:

- whether MBNA gave Mr R information that was clear, fair and not misleading in order to put him in a position where he could make an informed choice about the insurance he was buying
- whether, in giving any advice or recommendation, MBNA took adequate steps to ensure that the product it recommended was suitable for his needs

If there were shortcomings in the way in which MBNA sold the policy, I then need to consider whether Mr R is worse off as a result; that is, would he have done something different – i.e. not taken out the policy - if there had been no shortcomings.

I understand that the policy was sold via the internet and both Mr R and MBNA have said that it was not recommended to Mr R. As such I have considered the case on that basis.

Our adjudicator recommended that the complaint be upheld on the basis that the cost and benefit of the policy was not made clear. As I agree with our adjudicator on this point – which is sufficient for me to uphold the complaint – I have not considered any of the other issues raised by either party.

At the time of the sale Mr R was employed by his father and in good health. He has told us that he was not entitled to any sick pay and had no other relevant insurances that would have covered his obligations. However, I note that he lived at home, had no mortgage or debts and could rely on his family for support.

The policy cost 72 pence per £100 of outstanding balance and paid 3% of Mr R's outstanding credit card balance each month if he could not work due to disability or unemployment. The policy paid for 12 months in the event of unemployment and until Mr R returned to work or the debt was paid off in the event of disability. It also provided life cover.

In my judgement I am not satisfied that MBNA made the cost of the policy clear to Mr R. It has sent us a screen shot which it indicates is indicative of what would have been provided to Mr R. However, this is branded differently to the card that Mr R took out and refers to a cost that is different to what Mr R paid per month. Furthermore, it makes no mention of the 3% benefit.

The 3% benefit would have only just covered the minimum credit card repayment of 2.25%. Interest would also have been added to the premiums which would still have to be paid during a claim – making it of negligible benefit to Mr R in my opinion. This is not something I conclude Mr R would have found attractive.

In response to our adjudicator's view on this case, MBNA has directed this office to a number of cases where we have concluded; notwithstanding the 3% benefit level, that the policy was still appropriate for an individual. MBNA believes the rationale on those cases is broadly the same here, so the case should not be upheld.

In certain cases we have concluded that a person might be in such a precarious financial situation that a 3% benefit might still be attractive. This is because any loss of income might tip them over the edge in terms of their ability to service their debts. So although a 3% benefit might be unattractive for many, for some it might remain attractive because it would allow them to service at least one of their debts if they lost their salary.

However, in this case I do not find that Mr R was in such a financially precarious position. Whilst he did not have the benefit of sick pay, he was living at home and working for his father. So his point that he could have relied on the assistance of this family seems plausible. Furthermore, it seems he did not have any other debts to service, and no mortgage to cover.

Accordingly I find that Mr R would have been able to cover his debt for a short period of time making the benefit offered in this case unattractive. It follows that I find that the policy was mis-sold. I am not satisfied that MBNA brought the level of cover to Mr R's attention and that had it have done, he would not have taken out the policy, for the reasons discussed above.

redress

I understand that the credit card is now in default and the debt passed to another company. If my understanding is correct, and MBNA is no longer owed the debt, the redress should be paid directly to Mr R. MBNA must:

- A. Carry out a hypothetical reconstruction of the credit card account to find out what the closing balance of the credit card account would have been if Mr R had paid the same monthly payments, but the PPI policy had *not* been added to it.

This will involve MBNA removing the PPI premiums, any interest that was charged on the premiums and any charges (and interest on those charges) that would not have applied if the PPI had not been added to the account.

MBNA should then pay Mr R the difference between the closing balance and what the closing balance would have been without PPI.

- B. Pay Mr R interest at 8% per year simple* on any credit balance for any periods when the reconstructed account would have been in credit for the period it would have been in credit.
- C. Pay Mr R interest at 8% per year simple* on the difference between the actual closing balance of their account and the reconstructed closing balance from the date the account closed to the date of settlement.
- D. Set out in writing to Mr R how it has calculated the compensation in A, B and C.

*This part of the compensation may be subject to income tax. The treatment of this part of the compensation in Mr R's hands will depend on whether MBNA has deducted basic rate tax from the compensation and Mr R's financial circumstances. More information about the tax position can be found on our website.

Mr R should refer back to MBNA if he is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

my final decision

For the reasons outlined above I uphold this complaint and direct MBNA Limited to pay Mr R compensation as set out in the redress section of my final decision.

Michael McMahon
ombudsman