

complaint

This complaint is about a single premium payment protection insurance policy ('PPI') taken out with The Royal Bank of Scotland Plc in conjunction with a loan in 2004. The policy covered Mr G only in the event he was unable to work as a result of accident, sickness or unemployment. Mr and Mrs G (who are represented by a claims management company) say this was mis-sold because clear information was not provided to them about the policy and they would not have taken it out if this had been done.

background

I issued my provisional decision in April 2013, which is attached. In my provisional decision I explained why I was minded to uphold Mr and Mrs G's complaint. In summary this was because I did not feel RBS had put Mr G in a position where he could exercise a proper choice as to whether or not to take out this policy. I considered this failing was in itself sufficient for me to uphold his complaint.

I invited both parties to let me have any comments on what I had said before I reached a final decision. Neither RBS or Mr and Mrs G's representatives had any additional information to provide.

my findings

As neither party has made any further representations for me to consider I see no reason to alter the conclusions set out in my provisional decision.

my decision

My final decision is that I uphold Mr and Mrs G's complaint. I require The Royal Bank of Scotland Plc to provide compensation in accordance with the calculation of redress set out in the attached provisional decision.

James Park
ombudsman

copy of provisional decision

complaint

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my findings

I have carefully considered all of the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances. I have also taken into account relevant regulatory rules as well as the law and good industry practice at the time the policy was sold.

Our general approach to considering complaints about the sale of PPI can be found on our website. And it seems to me this reflects the relevant issues I need to consider in this case.

The key questions I need to consider therefore are:

- if RBS gave any advice or recommendation did it take adequate steps to ensure the product it recommended was suitable for Mr G's needs; and
- did RBS give him information that was clear, fair and not misleading so he was put in a position where he could make an informed choice about the insurance he was buying;

If RBS did something wrong when selling the policy, I then need to consider whether Mr G would have acted differently if it had not done so.

I understand the policy was sold at a meeting in branch. It appears only Mrs G was present at this meeting, but she took the paperwork away and returned this following discussion with Mr G. RBS says it did not recommend the policy, but provided information so Mr G could make an informed decision as to whether the policy was suitable. Mr and Mrs G believe a recommendation was made.

I cannot be sure what was said at the time. However, I do not believe I need to reach a firm conclusion on this point. This is because regardless of whether RBS provided advice or not I do not consider it made the optional nature of the policy clear to Mr G. And I consider this is of itself grounds to uphold the complaint.

was Mr G aware of the optional nature of the policy?

Mr and Mrs G believe the policy was presented to them in such a way that it was difficult to refuse. In particular Mrs G recalls only being provided with the monthly cost of the loan including insurance. RBS believes they were made aware of the optional nature of the policy.

As I was not present at the meeting in branch I cannot know exactly what was said at that time. However, I note Mrs G is able to recall the name of the adviser she spoke to which I consider gives some weight to her testimony. And the other evidence from the time does give me concern as to whether the optional nature of the policy would have been clear to Mr G. In particular it appears at the meeting with Mrs G a 'Loan Customer Duty of Care Checklist' was completed. This contained a declaration at the bottom with two boxes an applicant could sign against which said:

"I confirm that I am eligible for cover and I wish to apply for Loanguard cover.

I have decided not to take Loanguard cover."

Mr G has signed against the first statement. However, the second box has been struck through and a cross has been placed against the first signature box. I also note the rest of the form appears to have been completed by the adviser, presumably at the meeting in branch with Mrs G. So while I cannot be sure how this form looked when it was provided to Mr G I think there is a significant risk that by then the second box had already been struck through and there was a cross against the acceptance box. I am not persuaded this would have enabled him to exercise a proper choice as to whether to take out this cover.

And if Mrs G was only told at her meeting what the total monthly cost of the policy was I find it plausible this could have given her the impression the loan and insurance came as part of a non separable package. I also note the credit agreement which Mr G signed on the same day as the other documentation already contains the policy details. This suggests that even before he had been provided with any information about the policy it had been included with the loan.

I appreciate Mr G has signed separately on the loan agreement to take out the policy, but it appears this was also marked with his initials next to the acceptance box. In any case given the other issues highlighted above I consider Mr G might reasonably have felt that signing this section of the form was simply something he needed to do as part of the loan application process.

Nevertheless I appreciate I cannot be sure of exactly what happened when Mr G took this policy out. But for the reasons set out above I think it most likely RBS did not put him in a position where he could exercise a proper choice about doing so. I consider this failing is in itself sufficient for me to uphold this complaint and make an award against RBS.

redress

RBS will need to put Mr and Mrs G back in the position they would have been if they had taken out their loan without this PPI policy. I understand they paid off the loan early in 2007 and the policy was cancelled at the same time. So RBS will need to:

- (A) calculate, and pay Mr and Mrs G:
 - the amount which was actually required to settle the loan with PPI (including any interest and charges) net of any PPI premium refund;
 - less the amount they would have paid to settle the loan if they had taken it without PPI;
 - plus interest on the difference at the rate of 8% per year simple[†] from the date the loan was settled to the date the compensation is paid;
- (B) calculate, and pay Mr and Mrs G the amount of the net payments they made up to the time of settlement in respect of the PPI (including any interest and charges) by comparing:
 - the payments actually made;
 - the payments which would have applied if they had taken the loan without PPI; and
 - add interest on each of these net payments at the rate of 8% per year simple[†] from the date of each payment to the date the compensation is paid; and
- (C) set out in writing for Mr and Mrs G the details of the calculations under (A) and (B)

[†] – This part of the compensation may be subject to income tax. The treatment of this part of the compensation in Mr and Mrs G's hands will depend on whether RBS has deducted basic rate tax from the compensation and their financial circumstances. More information about the tax position can be found on our website. Mr and Mrs G should refer back to RBS if they are unsure of the approach it has taken and both parties should contact HM Revenue and Customs if they want to know more about the tax treatment of this portion of the compensation.

my provisional decision

For the reasons set out above, I am currently minded to uphold this complaint and direct The Royal Bank of Scotland Plc to pay redress as set out above.

I now invite both parties to provide me with any further submissions they wish to have taken into account by 10 May 2013, after which I will issue my final decision.

James Park
ombudsman