

complaint

This complaint is about two single premium payment protection insurance ("PPI") policies sold in conjunction with two loans, taken out in 2001 and 2002. Mr and Mrs F say that Aviva Insurance Limited ("Aviva") mis-sold the policies.

The PPI policies were provided by Aviva, but were sold alongside a loan provided by another business. I understand that Mr and Mrs F were informed, possibly in error, at the point of sale that the lender was acting as Aviva's agent. Aviva has agreed that, in the circumstances, responsibility for the sale of these policies, and the complaint about them, should lie with it. So, I will refer to Aviva throughout this final decision when discussing the sale of the policies.

background

Mr and Mrs F took out a secured loan for £8,000 in 2001 over a term of six years for the purposes of home improvements. They were sold, amongst other things, a single premium PPI policy, which cost £2,190.37 excluding interest and was due to run for five years.

In 2002, the loan was consolidated into a new loan with a term of around 15 years and a further single premium policy was sold costing £1,298.03 excluding interest and, again, running for a period of five years.

In 2010 Mr and Mrs F complained to Aviva, via their representative, that the policy was mis-sold. Aviva did not uphold the complaint. It said that although it only had limited sales documentation from the time of the sale, it concluded that the policies were not unsuitable or mis-sold.

Mr and Mrs F were unhappy with their response, so referred their complaint to the Financial Ombudsman Service in 2011. Our adjudicator issued their assessment of the complaint upholding the sale from 2002 but not upholding the sale in 2001. They were of the opinion that Aviva had failed to adequately explain the cost of the policy in both sales but that this only caused them detriment in the second sale.

Mr and Mrs F accepted the adjudicator's assessment but Aviva did not agree with this assessment and asked for an ombudsman's decision.

I issued my provisional decision in May 2013. I explained that I had carefully considered all of the available evidence and arguments from the outset, in order to decide what was fair and reasonable in the circumstances. I had also taken into account the law and good industry practice at the time the policy was sold.

Having done so, I was minded to uphold Mr and Mrs F's complaint about both policies. This was because I concluded that Aviva had not fully explained the cost of the policies, so that Mr and Mrs F could make an informed choice of whether to purchase them or not. I found that with a fuller understanding of the cost, it was unlikely they would have gone ahead with the policies.

Mr and Mrs F's representative responded to my provisional decision to say they accepted it and had no further comments to make.

Aviva responded saying it did not accept my provisional decision and had the following comments to make:

- It asks why I am considering both sales when Mr and Mrs F accepted the adjudicator's assessment – not upholding one of the sales. So it asks whether Mr and Mrs F have withdrawn their acceptance and if so, why the signed document no longer has relevance.
- It says an advised sale did not exist in relation to general insurance business at the time Mr and Mrs F purchased the policies.
- Aviva says that Mr and Mrs F would have had to sign a specific insurance application and included a specimen copy with its response, as it says this was not referred to in my provisional decision.
- Aviva PPI policies were optional and this was clearly stated in the loan documents Mr and Mrs F were provided with.
- The sales involved secured lending and the process this entailed was lengthy. As such, it considers that Mr and Mrs F would have been in possession of all the documents, so that they could review them, including the total cost of the PPI, at their leisure.
- It considers the sales were more likely than not conducted via the telephone, as Mr and Mrs F were existing customers and changes to existing borrowing generally took place by telephone.
- It refers to two of my colleagues' decisions - which it considers are similar in nature to Mr and Mrs F's complaint – where the complaints were not upheld.
- It appears Mr F made a claim on a previous policy – not connected to Aviva – which indicates he had an above average experience of such policies. Aviva considers he was very clearly aware of, and familiar with, the optional nature of the policies and the extent, intention and costs associated with cover.
- Although Mr F says he was sold a policy he did not need, Aviva does not accept this as Mr F found it necessary to claim under a different policy.
- Aviva is of the opinion that Mr F actively chose to purchase the policies having been provided with sufficient information to make an informed decision.
- Although Mr F had reasonable benefits through his employment, the policy would have paid out irrespective of those benefits.

my findings

I have reconsidered this complaint in its entirety in the light of the further comments made by Aviva. Having done so, I see no reason to depart from my provisional decision.

Although our adjudicator issued an assessment which did not uphold one of the sales – and Mr and Mrs F indicated their acceptance of this – Aviva did not accept the adjudicator's assessment, so there was no informal resolution of the complaint. Consequently, the complaint in its entirety was referred to me to consider. It falls on me to consider the whole

complaint i.e. the one submitted by Mr and Mrs F at the outset, which includes their assertion that both policies were mis-sold. Their acceptance of the adjudication – to me – does not indicate that they have accepted that one policy was not mis-sold but, rather, that they were prepared to settle the matter – something which Aviva was not prepared to do.

While Aviva mentions that an advised sale did not exist in relation to general insurance at the time Mr and Mrs F were sold the policies, I do not consider this point relevant to the dispute. Recommended sales existed at the time the policies were sold but, as I concluded in my provisional decision, I was not satisfied I could safely conclude that Aviva provided a recommendation to purchase the policies. But, regardless of this, it was still required to provide sufficient information about the policies so that Mr and Mrs F could make an informed decision about whether to purchase them or not and it was here where I considered there was a failing on Aviva's part. Although Aviva has provided a specimen of the insurance application, this does not contain all of the relevant information relating to the policies that it should have provided Mr and Mrs F with at the point of sale.

I am satisfied that on balance the policies were presented as optional in this case – the loan agreements refer to "*Optional Payment Protection Insurance*" - but as this was not something that I referred to as being crucial to my determination of the complaint within my provisional decision, I do not consider I need to comment further upon this.

While Mr F, it appears, made a claim on a previous policy, I do not share Aviva's view that this indicates he would have been aware of the full cost associated with the cover. I consider it likely that he would have been aware of the intention of the policies but this does not mean he had an understanding of the cost of the two policies it sold.

I accept Aviva's point that as the sales were attached to secured lending, this could indicate that the process may have been a slightly more extended one when compared to, say, an unsecured loan, so Mr and Mrs F may have had more time to consider the documentation. But the fact remains that I am not satisfied that the costs of the policies were clearly explained within the documentation. Although the sales may have initially taken place over the telephone, there are no recordings available to confirm what Mr and Mrs F were told, so I have considered the documentation relevant to the sales. The loan agreement in both sales only mentions the single premium cost of the insurance. It does not explain the interest added (which was substantial), the total cost or the monthly cost that would be involved. I therefore fail to see how Aviva presented the cost in a way that was fair, clear and not misleading, so I find that there was a shortcoming in the information it provided to Mr and Mrs F.

Although Aviva has referred to – what it considers to be – two similar cases where my colleagues have reached different conclusions to that I reached in my provisional decision, my role involves considering what is fair and reasonable in the individual circumstances of each case. While the facts in some cases may appear similar at first glance, there can be undoubted differences which can impact on the outcome.

In this case, I have concluded that there was a shortcoming in the information Aviva provided Mr and Mrs F with in both sales. And because of the impact of the cost of the PPI I find that, had Aviva properly disclosed the cost of the policies at the time of each sale, in my opinion Mr and Mrs F would, more likely than not, have acted differently and not taken out the cover. I say this because I am not satisfied, in this case, that they would have considered that the policies' overall costs in comparison to the amount of the loan made it worthwhile. On balance, I consider it probable that with a fuller understanding, they might well have declined the policies.

I am open to the possibility that there were other shortcomings in the way the PPI policies were sold to Mr and Mrs F (such as the mis-match in term not being fully made clear to them) but have not reached a firm conclusion on the possibility of other shortcomings, as I consider the complaint should succeed for the reasons I have already given.

For the reasons given above, I am not persuaded Aviva treated Mr and Mrs F fairly when it sold the policies to them. I find that it failed to provide clear, fair and not misleading information and this shortcoming caused them detriment.

fair compensation

From the evidence I have seen in this case, it seems to me most likely that if Mr and Mrs F had not purchased these PPI policies, they would still have proceeded with both loans.

Mr and Mrs F should be placed back in the position they would have been in had the PPI policies not been sold. The first loan was refinanced into the second loan, which I understand was then settled early. To that end, I require Aviva Insurance Limited to:

- (A) for each loan work out and repay the extra monthly payments paid by Mr and Mrs F because PPI was added to their loan and because some charges for PPI may have been carried forward from a previous loan by:
- calculating how much the loan payments would have been if Mr and Mrs F had taken out the loan without PPI and if PPI had not been carried over from a previous loan
 - subtracting those amounts from what Mr and Mrs F actually paid and paying them the difference
 - paying Mr and Mrs F interest (simple, not compound) on each of these amounts at the rate of 8% a year from the date each payment was made to the date the redress is paid[†]
 - taking into account any PPI premium refunded to Mr and Mrs F when the policy was cancelled.
- (B) write to Mr and Mrs F to set out what they will pay and when as a result of (A) and the details of the calculations.

[†] – This part of the compensation is subject to income tax. The treatment of this part of the compensation in Mr and Mrs F's hands will depend on whether Aviva Insurance Limited has deducted basic rate tax from the compensation and Mr and Mrs F's financial circumstances. More information about the tax position can be found on our website. Aviva Insurance Limited and Mr and Mrs F should contact HM Revenue and Customs if they want to know more about the tax treatment of this portion of the compensation.

I have carefully considered whether an additional payment for distress and inconvenience is warranted in this case. While Mr and Mrs F may have suffered a certain amount of distress and inconvenience in relation to this matter, I am not persuaded this has been sufficient to warrant an additional award.

my final decision

For the reasons set out above, I determine this complaint in favour of Mr and Mrs F.

I require Aviva Insurance Limited to pay Mr and Mrs F fair compensation in accordance with the calculation of redress I have set out above.

I make no further award against Aviva Insurance Limited.

Alexander MacDonald
ombudsman