

complaint

This complaint is about a single premium payment protection insurance (“PPI”) policy that was sold by a selling agent (who I will refer to as the “seller”) to Mr G in connection with a loan, in 2004.

Although the seller arranged the PPI cover, it was not covered by our jurisdiction at the time of the sale. Assurant Intermediary Limited (who I will refer to as “Assurant”) underwrote the policy and has agreed it should accept responsibility for the sale, and by extension, the complaint about the sale. Mr G says the PPI policy was mis-sold to him.

background

I have attached my provisional decision dated 17 September 2014 which forms part of this final decision. In my provisional decision I set out why I was intending to uphold this complaint. I asked both parties to let me have any further comments or evidence they would like to be considered by 17 October 2014. Neither party has added any further submissions or arguments to the case.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

As neither party has provided any further evidence or arguments for my consideration, I see no reason to depart from the conclusions set out in my provisional decision of September 2014. It follows that I uphold this complaint and make an award against Assurant Intermediary Limited.

fair compensation

From the evidence I have seen in this case, it seems to me most likely that if Mr G had not purchased this PPI policy he still would have taken out the loan. It is my understanding that the PPI policy has expired, but the loan is still running. Mr G should be placed in the position he would have been in now if he had taken out the loan without the PPI policy. So, Assurant Intermediary Limited should:

A. Restructure the loan (without charge to Mr G) so that:

- any outstanding PPI is removed, and
- the number and amounts of any future repayments (including any interest and charges) are the same as they would have been if Mr G had taken out the loan without PPI.

I am mindful that Assurant did not lend the money to Mr G and may not, therefore, be able to adjust the loan. If that is the case, Assurant should:

- work out and pay Mr G the difference between the current loan balance and what the loan balance would have been if PPI had not been added to it.
- reimburse Mr G any charges he incurs if he uses this amount to reduce the loan balance.

B. Work out and repay the extra monthly payments paid by Mr G because PPI was added to his loan by:

- calculating how much the loan payments would have been if Mr G had taken out the loan without PPI
- subtracting those amounts from what Mr G actually paid and paying him the difference
- paying Mr G 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 the value of any successful claim.

C. Write to Mr G to set out what he still owes and how much he will pay and when as a result of (A). This should include the details of the calculations and amounts under (B). If it cannot restructure the loan, Assurant should write to Mr G to set out the details of the calculations and amounts calculated under (A) and (B).

[†] I understand Assurant is required to deduct basic rate tax from this part of the compensation. Whether Mr G needs to take any further action will depend on his financial circumstances. More information about the tax position can be found on our website.

Mr G should refer back to Assurant 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 set out above, and in my provisional decision, I determine this complaint in favour of Mr G. I require Assurant Intermediary Limited to pay Mr G fair compensation in accordance with the calculation of redress I set out above.

I make no further award against Assurant Intermediary Limited.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr G to accept or reject my decision before 27 November 2014.

Carolyn Harwood
ombudsman

COPY PROVISIONAL DECISION

complaint

This complaint is about a single premium payment protection insurance (“PPI”) policy that was sold by a selling agent (who I will refer to as the “seller”) to Mr G in connection with a loan.

Although the seller arranged the PPI cover, it was not covered by our jurisdiction at the time of the sale. Assurant Intermediary Limited (who I will refer to as “Assurant”) underwrote the policy and has agreed it should accept responsibility for the sale, and by extension, the complaint about the sale. Mr G says the PPI policy was mis-sold to him.

background

Mr G took out a loan in 2004 and at the same time he purchased a PPI policy from the seller, during a meeting at his home. The policy covered him for disability and unemployment.

Our adjudicator upheld Mr G’s complaint on the basis that Mr G was not provided with adequate information about the policy, during the sale.

Assurant does not agree with our adjudicator’s view, so the matter has been referred to me for a decision.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have also taken account of the law and good industry practice at the time the PPI policy was sold. Therefore the key questions I need to consider are:

- whether the seller gave advice to Mr G in relation to the sale of the PPI policy, and took sufficient steps to make sure that the policy was suitable for his needs; and
- whether Mr G was given information that was *clear, fair and not misleading* so that he was able to make an informed choice about the insurance he was buying.

If there were flaws in the way that the policy was sold, then I need to consider whether Mr G is worse off as a result. In other words, if there had not been any problems with the sale, would Mr G have made a different decision about buying the policy?

The sale took place in December 2004, nearly ten years ago. It is not surprising that, as a result, there is limited information available for me to consider. Mr G says that a senior mortgage consultant came to see him at his home, to discuss consolidating his mortgage, credit cards and loans. Mr G recalls that he was advised by the seller to purchase the PPI policy. As the sale took place in his home; Mr G recalls receiving a personal recommendation to purchase the PPI; and Assurant has not provided any evidence to contradict Mr G’s recollections, I am currently satisfied it is more likely than not that the sale did take place during a meeting at Mr G’s home and was an advised sale.

I have therefore considered whether, in advising Mr G to purchase the policy, the seller took sufficient steps to make sure that the policy was suitable for him. And I am not persuaded it did. I say this because the policy did not provide for a pro-rata refund to be paid when the policy was cancelled. In fact, The terms of the policy provided in section 6, that if the policy was cancelled outside of 30 days from when the policy started, the policy would be deemed to be non-cancellable and no refund would be payable. Having carefully considered this term, I am satisfied that it is an unfair contract term, and I am of the view that if this had been made clear to Mr G at the time of sale, it would have likely influenced his decision to take out the PPI policy. I also currently consider that this term made the policy unsuitable for Mr G because it reduced Mr G’s flexibility to re-finance as he was unable to cancel the policy and receive a refund (after the first 30 days). Given the purpose of the loan was to

consolidate debt, it is possible that within the six year term of the policy, Mr G may have had a need, again to consolidate his debts. Had he been told that the policy might not be suitable for him as a result of this provision, I'm not currently persuaded he would have gone ahead with buying the policy.

So, I am currently minded to conclude that the seller did not make a suitable recommendation for Mr G. It did not take account of Mr G's interests or treat him fairly.

I am also of the view that Mr G has suffered a loss as a result of the seller's failings. I say this because I do not think Mr G would have gone ahead with buying the policy if a suitable recommendation had been made.

I have also considered whether the seller gave Mr G information that was *clear, fair and not misleading*, and I am not currently persuaded that it did. Given the date of the sale, there is limited information available for me to consider. However, on the basis of the information that I have been provided with, I am of the view that Mr G was not given enough information about the cost of the policy, before he decided to go ahead with his purchase. It seems to me that Mr G was only told the amount of the PPI premium. I have not been provided with evidence to suggest that he was told what the monthly cost would be, or the total cost of the policy, including interest, for the term of the loan. Without this information, I don't consider Mr G was given enough information to make an informed choice about purchasing the policy. I say this because Mr G was taking out a loan of £60,000 to consolidate existing debts. I am therefore persuaded that a cost effective arrangement would have been an important consideration for him. However, the seller suggested a policy which added significantly to his borrowing costs (£3504.00 plus interest over a 15 year term).

Neither the seller nor Assurant have been able to confirm whether the premium was added to the loan, and interest was then paid on the premium. However, in my experience, there are very few cases where a single premium is paid as a separate cash payment, rather than being added to the loan (particularly where the consumer is borrowing money to consolidate their debts). Given that the vast majority of cases work in this way, and no one has disputed that interest was paid on the premium, I see no reason to treat this complaint differently. If Assurant disagrees that the premium was added to the loan, and interest was paid on the premium, then I would invite it to provide evidence of this in response to my provisional decision. I would also add that Mr G has provided copies of his bank statements which show that interest of 4.99% per annum is payable on the outstanding loan balance.

I therefore currently consider that if Mr G had been provided with clear cost information during the sale, he would not have gone ahead with buying the policy.

It follows that I am currently minded to uphold this complaint and make an award of compensation against Assurant Intermediary Limited.

fair compensation

From the evidence I have seen in this case, it currently seems to me most likely that if Mr G had not purchased this PPI policy he still would have taken out the loan. It is my understanding that the PPI policy has expired, but the loan is still running. Mr G should be placed in the position he would have been in now if he had taken out the loan without the PPI policy. I am therefore currently minded to require Assurant Intermediary Limited to:

A. Restructure the loan (without charge to Mr G) so that:

- any outstanding PPI is removed, and
- the number and amounts of any future repayments (including any interest and charges) are the same as they would have been if Mr G had taken out the loan without PPI.

I am mindful that Assurant did not lend the money to Mr G and may not, therefore, be able to adjust the loan. If that is the case, Assurant should:

- work out and pay Mr G the difference between the current loan balance and what the loan balance would have been if PPI had not been added to it.
- reimburse Mr G any charges he incurs if he uses this amount to reduce the loan balance.

B. Work out and repay the extra monthly payments paid by Mr G because PPI was added to his loan by:

- calculating how much the loan payments would have been if Mr G had taken out the loan without PPI
- subtracting those amounts from what Mr G actually paid and paying him the difference
- paying Mr G 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 the value of any successful claim.

C. Write to Mr G to set out what he still owes and how much he will pay and when as a result of (A). This should include the details of the calculations and amounts under (B). If it cannot restructure the loan, Assurant should write to Mr G to set out the details of the calculations and amounts calculated under (A) and (B).

[†] I understand Assurant is required to deduct basic rate tax from this part of the compensation. Whether Mr G needs to take any further action will depend on his financial circumstances. More information about the tax position can be found on our website.

Mr G should refer back to Assurant 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 provisional decision

For the reasons set out above, my provisional decision is that I propose to uphold this complaint and require Assurant Intermediary Limited to pay Mr G fair compensation in accordance with the calculation I have set out above.

I am not currently minded to make any further award against Assurant Intermediary Limited.

Carolyn Harwood
ombudsman