

complaint

Mr and Mrs R's complaint concerns the sale of five payment protection insurance (PPI) policies in 1995, 1998, 1999, 2000 and 2002 sold in conjunction with mortgages and loans. Mr and Mrs R say that the policies were mis-sold to them by Nationwide Building Society (Nationwide). Mr and Mrs R say that they were told they had to take the PPI policies in order to obtain the loans. Mr R has also said that as he was self-employed at the time of some of the sales he considers that the terms of the policies made them unsuitable. In addition Mr and Mrs R have also said that they were not provided with information about the policies.

background

An adjudicator from this Service wrote to Mr and Mrs R on 19 July 2012 setting out his initial findings which were that he did not uphold Mr and Mrs R's complaint about the sale of any of the policies. Mr and Mrs R responded and the adjudicator then wrote again on 14 August 2012 reiterating his opinion that the policies were most likely not mis-sold. Mr and Mrs R then requested that the complaint be reviewed by an ombudsman. I issued my provisional decision on 7 March 2013. I said that I was minded to uphold Mr and Mrs R's complaint about the sale of the PPI policy in 2000. I also said that I was not persuaded to uphold Mr and Mrs R's complaints about the sale of the other four policies. Both parties have responded to my provisional decision with further representations. I have considered both parties' further submissions and I set out my findings below.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint in doing so I have taken into account the law and good industry practice at the time the policy was sold.

It seems to me that the relevant considerations in this case are materially the same as those set out in the section of our website explaining how we deal with PPI complaints.

The overarching questions I need to consider, therefore, are whether Nationwide gave Mr and Mrs R information that was clear, fair and not misleading in order to put them in a position where they could make an informed choice about the insurances they were buying and, whether in giving any advice or recommendation, Nationwide took adequate steps to ensure that the products it recommended were suitable for Mr and Mrs R's needs. If there were any shortcomings in the way the policies were sold I need to decide if Mr and Mrs R are worse off as a result. That is, would Mr and Mrs R be in a different position to the position they find themselves in now if there had not been any shortcomings.

1995 policy

This regular monthly premium PPI policy was sold in conjunction with a mortgage. Having reviewed the documentation including the mortgage application and mortgage offer I was persuaded that the PPI policy would most likely have been presented as optional. I also considered Mr and Mrs R's circumstances at the time of the sale and considered that it was most likely to have been a suitable recommendation for them.

Neither party has made any further representations regarding my findings on the sale of this policy. Therefore I see no reason to amend my initial findings, namely that I do not uphold Mr and Mrs R's complaint about this policy.

1998 policy

This was a single premium PPI policy sold in conjunction with a joint personal loan. The application form for the loan was in the format of a postal application, designed to be completed by the consumer and then returned to Nationwide by mail. I therefore concluded that it was most likely to have been completed by Mr and Mrs R without advice from Nationwide. I noted that the application form contained a separate section which Mr and Mrs R had signed to apply for the PPI policy. I also noted the credit agreement that was subsequently sent to Mr and Mrs R and signed by them referred to the PPI policy as optional. Taking all this into account I was not persuaded that the PPI policy was presented to Mr and Mrs R as anything other than optional.

Mr R also provided evidence that he was self-employed at the time even though the application form that had been completed indicated he was employed and there was an employer's reference on the file. In any event, having considered the terms and conditions of the policy relating to unemployment claims for the self-employed I did not find that they would have made it significantly more difficult for Mr R to claim under the unemployment provisions of the policy than an employed person.

Mr and Mrs R have responded to my provisional decision and pointed out that they were not in receipt of the policy document at the time of their application. They say this was sent to them later when they were asked to sign the credit agreement.

I did acknowledge this in my provisional decision and I stated that I did have concerns the cost of the PPI was not set out on the application form. But after taking into account Mr and Mrs R's circumstances I was not persuaded that they would likely have decided against taking out the policy if they had been provided with any clearer information. I have reviewed their circumstances again and taken into account that Mr R was self-employed, had dependant children, a mortgage and no significant savings. Having done so I remain of the view that Mr and Mrs R's decision to take the policy would most likely not have been any different if they had been provided with any clearer information about it.

1999 policy

The policy sold in 1999 was another single premium type policy sold in conjunction with a personal loan. The application form was very similar to the policy sold in 1998 although the copy provided by Nationwide is very poor and difficult to read. For essentially the same reasons as for the 1998 sale above I was not persuaded to uphold Mr and Mrs R's complaint about the sale of this policy.

Neither party has made any further representations regarding my findings on the sale of this policy. Therefore I see no reason to amend my initial findings, namely that I do not uphold Mr and Mrs R's complaint about this policy.

2000 policy

The policy sold in August 2000 was a regular monthly premium PPI policy sold in conjunction with a secured loan. The loan and the PPI policy were sold during a telephone call. In my provisional decision I said that I was minded to uphold Mr and Mrs R's complaint about the sale of this policy because I was not persuaded that the optional nature of the policy was made clear. I set out my reasoning for this in my provisional decision in the following terms:

On the application form itself there is the following question; *"Would you like optional LoanCare/Payment Protection Cover?"* Next to this question are two boxes marked "Yes" and "No". I note that both boxes have been ticked and it appears to me that the tick in the "No" box is more consistent with the rest of the ticks on the form than the tick in the "Yes" box, indicating that it is likely the "Yes" box together with the handwritten note *"DT SOLD"* was added after the "No" box was ticked.

In addition I note that there is a second form entitled *"Branch Comment Sheet"* on file which also bears the Stockport branch's code. On this form is the question; *"Does the Customer require LoanCare Cover"*, next to this question are two boxes marked "Yes" and "No". The "No" box has been marked with a tick but right next to this is another handwritten note that reads, *"YE £96.61 £10.21 M £2.35W"*, again this *may* have been added after the "No" box was ticked.

So I am persuaded by the evidence presented by these forms that at least initially Mr and Mrs R most likely declined to take PPI with their loan.

There is also a letter dated 30 August 2000 addressed to Mr and Mrs R. Within the letter there is a paragraph headed, *"Insurance"* which states; *"Your loan will be covered by Payment Protection. An outline of the cover is enclosed, please keep this safe. Your premium is payable by a separate Direct Debit to CGU Insurance. A direct debit instruction is enclosed for completion. Please complete your current account details, sign, date it, then return it to us. You must return this before I can issue your loan"*.

It is my view that the last sentence implies the loan and PPI policy were part of the same package and at the very least it would have delayed Mr and Mrs R's loan application if they chose not to return the PPI direct debit even though it was being paid separate to the loan.

In the complaint questionnaire Mr and Mrs R have said, *"I was told I would have to take out the insurance because the loans were secured against the property"*. I note this sale is the only one of the personal loans that was secured, so if Mr and Mrs R's recollections are accurate it could only be this loan that they are referring to.

In response to my provisional decision Nationwide has expanded on what it told us in its business response form and its final response to Mr and Mrs R's complaint. It has said that there would have been a *second* telephone call to Mr and Mrs R *after* the initial telephone application. The purpose of this call would have been to tell Mr and Mrs R that their loan had been approved and to ask them if they still wanted to proceed without the PPI policy. Nationwide has said that its representative would have reiterated the information about the cover and given Mr and Mrs R the opportunity to opt for the PPI policy. Nationwide has said that at this point Mr and Mrs R changed their mind and decided to purchase the PPI policy.

Nationwide has also said that Mr and Mrs R's testimony about the sale of the PPI policies has not been consistent and that they changed their complaint point after they received Nationwide's final response to their complaint and when they received the adjudicator's initial view from this service which was unfavourable.

Nationwide has also confirmed that the direct debit for the PPI policy would have had to be returned or it would have delayed the issue of the loan. It has said this is to ensure that the PPI policy ran concurrently with the loan.

In addition Nationwide has told us that Mr and Mrs R took out a further advance secured on their home in April 2000 and did not take PPI. Nationwide has said this demonstrates that Mr and Mrs R were aware they could have a secured loan without PPI.

Firstly I have considered Mr and Mrs R's testimony and I do not agree with Nationwide that it has changed to any great degree. Essentially they consistently state that the policies were presented to them as not being optional. Nationwide has said Mr and Mrs R initially wrote that the PPI policies were mis-sold to them without going into any detail. They subsequently wrote in the questionnaire sent to them by Nationwide that, *"We were told we had to take the PPI to acquire the loan and advance payments"*. Nationwide says that Mr and Mrs R changed their complaint again when bringing it to this Service stating, *"We were told we could not have the secured loans without payment protection"*. Finally Nationwide has pointed to the letter Mr and Mrs R wrote to this Service in response to the adjudicator's view stating, *"In August 2000 the loan was for £10,000. The agreement stated this would be inclusive of PPI without us ever being asked if we require it"*.

In my view it must be remembered that Mr and Mrs R were sold five loans with PPI policies, and I understand a further loan in April 2000 without PPI, over the course of seven years. It would be perfectly understandable if their recollections were not entirely clear and they confused the different sales. It is also to be expected that they would expand upon their complaint in reply to Nationwide's final response to their complaint and our adjudicator's view. In much the same way I note that Nationwide has responded to my provisional decision by providing much more information about the sale of the policy in 2000 than it did in the business response form it completed for this service.

I have noted Nationwide's point that the PPI was accepted by Mr and Mrs R after the second telephone call and therefore the direct debit for the policy needed to be completed. However I still consider that the following wording at the very least would not have helped to establish in Mr and Mrs R's mind that the PPI policy was separate from the loan and optional, *"a direct debit instruction is enclosed for completion. Please complete your current account details, sign, date it, then return it to us. You must return this before I can issue your loan"*.

I note the point Nationwide has made that Mr and Mrs R took a further advance in April 2000 without PPI. Nationwide states that Mr and Mrs R would therefore be aware that the PPI policy was not compulsory. However it is also evidence that Mr and Mrs R were happy to take a loan without PPI only five months earlier and indeed this is the option they appear to have chosen when first applying for the loan in August 2000.

I have carefully considered Nationwide's response to my provisional decision and I do accept it is *possible* that Mr and Mrs R declined the PPI policy in the first telephone call only to change their mind after receiving a second telephone call reiterating the information about the cover.

Despite this, when weighing up the evidence I find Mr and Mrs R's testimony about what they were told persuasive when taken together with the telephone application form's amendments and the wording on the letter dated 30 August 2000. Because of this I am not minded to alter my initial findings and I uphold Mr and Mrs R's complaint about the sale of the policy in August 2000.

2002 policy

This policy was a single premium PPI policy. It was sold in conjunction with another unsecured personal loan part of which was used to consolidate the loan taken in 1999. I considered all the available documentation and both parties' representations but in my provisional decision I said that I had not seen *sufficient* evidence to persuade me that the policy was presented as anything other than optional. I cannot be certain how the policy was sold or if Mr and Mrs R's information needs were met, but as Mr and Mrs R's circumstances were similar to how they were in 1998 and 1999 I was not persuaded that the policy would have been unsuitable or that they would have decided against taking the PPI policy if they had been provided with any clearer information about it.

Neither party has made any further representations regarding my findings on the sale of this policy. Therefore I see no reason to amend my initial findings, namely that I do not uphold Mr and Mrs R's complaint about this policy.

summary

In summary I do not believe I can safely conclude that Mr and Mrs R were advised that taking the 1995, 1998, 1999 and 2002 policies would improve their chances of being accepted for the loans. I am also satisfied that it was most likely suitable of Nationwide to recommend the policies to them, if it advised them. Finally I am not persuaded that Mr and Mrs R would have decided against taking the policies out if they had been provided with clearer information about them.

However, having considered Nationwide's response to my provisional decision and weighed up the available evidence together with Mr and Mrs R's testimony I remain persuaded that it was most likely that the 2000 policy was not presented as being optional and I therefore uphold Mr and Mrs R's complaint in respect of the sale of this policy only.

fair compensation

Mr and Mrs R should be placed back in the position they would have been in had the PPI policy not been sold in August 2000. To that end, I order Nationwide to:

- refund and pay Mr and Mrs R the total premiums they paid on the PPI policy;
- plus interest at 8% per year simple on each of the premiums paid from the date of payment to the date of settlement[†]; and
- set out in writing for Mr and Mrs R how the above was calculated.

[†] – This part of the compensation is subject to income tax. The treatment of this part of the compensation in Mr and Mrs R's hands will depend on whether Nationwide has deducted basic rate tax from the compensation and Mr and Mrs R's financial circumstances. More information about the tax position can be found on our website. Nationwide and Mr and Mrs R should contact HM Revenue and 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 I do not uphold Mr and Mrs R's complaints about the sale of the PPI policies in 1995, 1998, 1999 and 2002.

For the reasons set out above I determine the complaint for the policy sale in August 2000 only in favour of Mr and Mrs R.

I therefore order Nationwide Building Society to pay Mr and Mrs R fair compensation in accordance with the relevant calculation of redress set out above. I do not make any further award.

Steve Thomas
Ombudsman