complaint

Mr and Mrs N complain about a life and critical illness policy they were sold by Bank of Scotland plc (trading as Halifax).

They thought the policy was a condition of the lending. They have since found out it was not compulsory. Because the bank has agreed that part of the policy was mis-sold they have asked for a refund of all their premiums with interest.

background

In 2002, Mr and Mrs N took out a capital and interest repayment mortgage for £198,000 over 22 years. At that time Mr N was employed and Mrs N was a housewife and they had a young daughter. They had no other life cover.

They were recommended a total mortgage protection policy (TMPP) for the same period. This was made up of three elements; payment protection insurance (PPI), a joint level term assurance policy and critical illness cover (CIC). Mr and Mrs N say they were told it was a condition of the mortgage and had they known it wasn't they wouldn't have taken it.

Halifax has since refunded payments made to the PPI element of the policy.

The adjudicator looked at the complaint and felt it should be upheld in part. He found the policy was not a condition of the lending. However, he did feel the policy should have been sold on a decreasing term basis to match the repayment mortgage. Halifax agreed and made an offer to refund the difference in cost between the level term life and critical illness cover sold and a competitively priced decreasing term life and critical illness policy.

Mr and Mrs N disagreed and feel they should be refunded the full cost of the policy as it shouldn't have been sold as a condition of their mortgage.

As no agreement was reached, the complaint has been passed to me to review.

my findings

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

Mr and Mrs N say they were told that the policy was compulsory. While I do not doubt their recollection of their meeting with the adviser in 2002, they must appreciate that I was not there. Therefore I have to rely on the information recorded as well as their recollections in order to decide on the balance of probabilities.

Mr and Mrs N say that they would not have taken out the policy if they didn't think it compulsory. As I was not at the advice meeting I cannot know for certain want was said. But I have looked at the documentation provided to them at the time and there is no indication that the policy was compulsory. For example, there was no requirement for a policy to be assigned to the mortgage.

The policy booklet which would have been given to Mr and Mrs N sets out the benefits, exclusions and cancellation rights. The booklet explains the consideration period which would allow them to cancel the policy. From this I think Mr and Mrs N ought to have realised the policy was optional and they could have cancelled it if it didn't meet their needs.

While the TMPP was paid for by a single direct debit and the application took only one set of signatures, it was made up of three elements and each element had its own premium. I will look at each element in turn.

PPI – Mortgage Repayments Cover

Halifax has refunded the PPI element of the policy as it was miss-sold to Mr and Mrs N. It should be noted that each of the products that made up the TMPP had different terms and conditions. Just because one part of policy has been refunded this does not imply the other parts were unsuitable.

Life cover

As parents of a small child I think that it would be reasonable for Mr and Mrs N to have taken out life cover. In the unfortunate case that either of them had died a lump sum would have been paid and the mortgage cleared. This would have provided them with financial security.

However, the life cover that Mr and Mrs N took out was on a level term basis. This meant that towards the end of the mortgage term, the policy would have given them more cover than was needed. For this reason I think that decreasing term assurance would have been more suitable, the amount of cover would come down as the amount outstanding on the mortgage reduced. Halifax has agreed that a decreasing term assurance policy would be more appropriate and has offered to refund the difference in premiums.

Critical Illness Cover

By taking out the CIC Mr and Mrs N would be covered if either of them contracted a defined critical illness. Again I think it would be reasonable for parents with a young child to take out such a policy which would give them financial security if either became ill or disabled and could not pay the mortgage. So I cannot say that this element of the policy was unsuitable.

However, as with the life cover, the CIC was provided on a level term basis when a decreasing term was more appropriate. I understand that Halifax has offered to refund any financial loss in relation to the critical illness element of Mr and Mrs N's policy.

I understand this will be a disappointment for Mr and Mrs N but based on the information before me I have reached the same conclusion as the adjudicator. I think the recommendation of the policy was generally suitable. But as Mr and Mrs N had a repayment mortgage it should've been provided on a decreasing basis and, as such, I think the offer made by Halifax is fair and reasonable.

my final decision

For the reasons given, my final decision is that I partially uphold the complaint.

I direct Bank of Scotland plc to refund the total of the difference in cost between Mr and Mrs N's level term assurance policy and the cost of a competitively priced decreasing term assurance policy on the same terms.

Simple interest at 8% per annum should be added to the differences from the date of each payment of the premium until settlement. If Bank of Scotland is obliged to deduct income tax from this interest it must provide Mr and Mrs N with a tax deduction certificate. They can then reclaim this tax from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs N to accept or reject my decision before 7 August 2015.

Sue Rossiter
ombudsman