

The complaint

Mr and Mrs G complain that Bank of Scotland plc trading as Halifax mis-sold them payment protection insurance (“PPI”).

What happened

Mr and Mrs G took out a mortgage with PPI in 2001. Halifax told us that the policy covered them both and it protected the monthly mortgage repayments in the event that they couldn't work.

Our adjudicator didn't uphold their mis-selling complaint. Mr and Mrs G disagreed with our adjudicator. Their main complaint is that the PPI wasn't added with their consent but implied as something that was part of the mortgage offer and so mis-sold as they weren't given any option about having it. Mr and Mrs G said they had felt pressured into having PPI and it wasn't something they had wanted or needed.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We've set out our general approach to complaints about the sale of PPI on our website and I've taken this into account in deciding this case.

I've decided not to uphold Mr and Mrs G's complaint. Here's why I say this.

Mr and Mrs G took out the mortgage in joint names and it looks like they both had PPI. So I've looked at everything they've told us about their circumstances when the policy was taken out.

There's only limited information. The original paperwork from the sale is no longer available and Halifax can't confirm how this PPI was sold.

I don't think that's surprising given that Mr and Mrs G took out this PPI so long ago. But Halifax's records show that Mr and Mrs G had PPI on their mortgage in 2001.

I've thought carefully about what they've told me they remember about the circumstances of this sale and feeling pressured into having to take out PPI. But it wouldn't be reasonable to rely just on what Mr and Mrs G might be able to remember after such a long time. And it's unsurprising that Mr and Mrs G told us they couldn't remember some details from this sale. So what Mr and Mrs G say isn't enough on its own for me to be able to uphold their complaint.

In order to uphold this complaint I'd have to find that it's likely that Mr and Mrs G weren't given a fair choice about PPI or that it was added to their account without their consent.

I have to look at all the available information and decide what I think is most likely – making reasonable assumptions where necessary.

Based on the information I've seen, I can't fairly say that the policy wasn't presented as optional or that it was added to Mr and Mrs G's mortgage without their consent.

Here's why I say this.

Their mortgage was a major financial commitment, repayable over a substantial number of years. Their home would've been at risk if their mortgage payments weren't kept up to date. PPI provided dependable protection. It looks to me as if Mr and Mrs G could've found PPI useful if they'd needed to claim. So, I can see why they might've felt that having PPI was worthwhile for them.

Mr and Mrs G were both eligible for PPI. On balance, I think it's likely that they decided they wanted to have the benefits PPI offered and they chose to buy the policy – even if they've forgotten this now.

Halifax treated this complaint as if it had personally recommended PPI to Mr and Mrs G. If a business makes a recommendation about PPI, it doesn't just have to give important policy information in a clear way. It also has to take reasonable steps to make sure the cover it recommends is suitable. So looking at their complaint this way gives Mr and Mrs G's complaint the best chance of succeeding. And I think that's the fairest way to assess their complaint, bearing in mind what Mr and Mrs G recall about the sale and given the lack of paperwork.

I've looked carefully at what Mr and Mrs G told us about their situation at the time to see if PPI was right for them when they took out this mortgage.

PPI protected Mr and Mrs G in the event of unemployment for up to 24 months per claim.

And the policy would've also covered their mortgage repayments for up to 24 months if either of them had an accident or became too sick or disabled to work. That's significantly longer than Mr and Mrs G told us they could've relied on getting any sick pay through work – and the policy would've paid out on top of any work benefits, which might've been useful if they'd faced extra costs as a result of being sick or disabled.

Mr and Mrs G could've made repeated claims on the policy after a qualifying period back at work.

Mr and Mrs G mentioned having significant savings at the time. But it looks like they might've used at least some of that money as a deposit on their new home. And they had a number of other credit commitments listed on their mortgage application. So it's possible that they didn't have as much spare cash at the time as they remember.

Even if I'm mistaken about this, I don't know if Mr and Mrs G would've always had savings they could've relied on if they'd needed to make a claim. And, if they didn't put all their money towards keeping down the cost of borrowing and they preferred to keep savings intact, perhaps to provide financial security or use for other spending they might've had planned, then I think they'd have valued the protection PPI offered.

Having PPI meant that Mr and Mrs G could be sure they'd be able to pay their mortgage monthly repayments without breaking into their savings even if they couldn't work.

So I can see why Mr and Mrs G might've wanted PPI – even if they've forgotten this now. And I think PPI was suitable for them based on what I've seen of their circumstances at the time.

I've seen nothing to suggest that Mr and Mrs G were affected by any of the main things the policy didn't cover. So, I think it unlikely that better information about the policy's exclusions and limitations would've affected their decision to take it out.

I don't know if the PPI cost was made clear to Mr and Mrs G when they bought the policy. But they haven't suggested that they couldn't afford the monthly premiums. And this was a policy they paid for monthly – so they could've cancelled the PPI at any time if they no longer wanted to pay for it or keep the policy running.

It's possible there might've been some failings in the way this policy was sold. But I think Mr and Mrs G still would've decided to buy the policy if they'd been better informed as the policy gave them useful protection in their particular situation.

I've also thought about whether Halifax needs to give back to Mr and Mrs G some of the commission they paid. The Supreme Court ruling and new rules and guidance don't apply to certain types of mortgage agreement – including a 'regulated mortgage'. As Mr and Mrs G's mortgage became a regulated mortgage before 6 April 2008 they don't apply. So Halifax doesn't **need** to refund any of the commission Mr and Mrs G paid for the PPI they had with that mortgage.

But Halifax has already **offered** to give back some of the cost of the PPI to Mr and Mrs G. So I don't think it needs to do anything more. I understand Halifax will pay this to Mr and Mrs G once it receives their acceptance.

In coming to my decision I've taken into account everything Mr and Mrs G have told us, including what they've said in response to the adjudicator's view. But this doesn't change my conclusion. I appreciate that my decision will disappoint Mr and Mrs G, but I hope that setting things out as I've done will help explain how I've reached my decision.

My final decision

For these reasons, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 17 December 2020.

Susan Webb
Ombudsman