

## **The complaint**

This complaint is about a loan payment protection insurance (PPI) policy taken out in 1988. Mr and Mrs R say Bradford & Bingley Plc ("Bradford & Bingley") mis-sold them PPI.

## **What happened**

The background and circumstances leading up to this complaint, which include Mr and Mrs R's circumstances at the time of the sale as well as the PPI policy benefits, limitations and exclusions of cover, aren't disputed. So I haven't repeated all of this information here.

Our adjudicator did not uphold the mis-sale element of the complaint, but he thought the PPI should have been cancelled when the loan it covered was repaid. So he thought Bradford and Bingley should repay the premiums paid after that date, with interest.

Mr and Mrs R's representative disagreed with the adjudicator's opinion – it didn't raise any new or additional points but repeated the same complaint points and arguments it had previously made. It thought Mr and Mrs R should be compensated in full. Bradford and Bingley also disagreed with the adjudicator's opinion, saying that it thought no compensation was due as the policy had provided ongoing cover for Mr and Mrs R's mortgage.

As the complaint couldn't be resolved informally, it has been passed to me for a final decision.

## **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.

When considering what is fair and reasonable, I am required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

We've set out our general approach to PPI mis-sale complaints on our website and published some example final decisions that set out in detail how these relevant considerations may apply to PPI sales like Mr and Mrs R's. I haven't set out that detailed information here, but I've taken into account all relevant considerations in deciding Mr and Mrs R's complaint.

Having done so, I've decided not to uphold the mis-sale element of this complaint, but that the premiums paid after the loan was repaid should be refunded.

I've summarised my reasons for this conclusion below. Looking first at the sale of the policy:

- I think Bradford & Bingley made it clear that Mr and Mrs R didn't have to take out the PPI and they chose to take it out. I say this because Bradford & Bingley sent in a copy of the loan application form and I can see that Mr and Mrs R had to state that they wanted the PPI. And there's nothing on the form to suggest the PPI was compulsory.

- Bradford & Bingley didn't recommend the PPI to Mr and Mrs R, so it didn't have to check that the PPI was right or suitable for them. But it did have to give Mr and Mrs R enough clear and timely information so they could decide for themselves if it was right for them.
- It's possible the information Bradford & Bingley gave Mr and Mrs R about the PPI wasn't as clear as it should've been. But I've found that they chose to take it out - so it looks like they wanted this type of cover. The cover wasn't fundamentally wrong for Mr R (who was the person insured – Mrs R wasn't eligible for the cover). Although Mr R says he had a medical condition some time before the policy was taken out, I don't think better information about the existing medical condition exclusion would've caused Mr and Mrs R to change their minds about taking out the policy. I say this because the terms and conditions showed that a claim for this condition would not have been excluded, because it had occurred so many years before the policy was sold. There were also no additional restrictions on cover for mental health or back problems. It also looks like it was affordable – so it seems like it would have been useful for them had something gone wrong. Because of this I don't think Mr and Mrs R would have declined the cover had Bradford & Bingley done anything more.

Overall, I consider that Mr and Mrs R would have still taken out PPI. The policy was sufficiently close to what it's likely they thought they were getting, and I think the policy could've provided a useful benefit in a difficult time, given their circumstances at the time. And in those circumstances, I think that they would have taken out the policy in any event.

Mr and Mrs R's representative has raised a number of what I consider to be general complaint points, which it says apply to all PPI complaints. These general points include: a claim that the Financial Ombudsman Service is not correctly applying the regulator's rules and guidance for handling PPI complaints; these policies represented poor value because of the number of significant exclusions and limitations of cover coupled with the low claims ratio; and the duty of utmost good faith meant Bradford & Bingley should have disclosed the poor value and explained the significance of the limitations and exclusions and the impact they had on the chances of making a claim.

But Mr and Mrs R's representative has not said how these points apply to the specific facts and circumstances of Mr and Mrs R's individual complaint – just that they apply to all PPI complaints.

I have thought about these things and how they might apply in Mr and Mrs R's particular case. But these points don't persuade me to alter my conclusions about what is fair and reasonable in all the circumstances of the complaint – for the reasons I've set out above I don't uphold the mis-sale element of this complaint.

However, I can see from the copy of Mr and Mrs R's loan application form that they clearly wanted to cover only the extra amount they were borrowing – this was £2,500 over a three-year term. From the evidence I have, it doesn't seem that, when the loan was repaid in 1991, Bradford & Bingley asked Mr and Mrs R whether they wanted the PPI to continue as cover for their mortgage. The nature of the loan is also unclear, in that the application form refers to a personal loan, and doesn't say whether it was secured on Mr and Mrs R's home, whereas Bradford and Bingley said it was a secured loan. And it seems to have treated it as a further advance on the mortgage.

Overall, I'm not satisfied that it was explained to Mr and Mrs R that the policy would continue after the loan was repaid, or that they were given a clear choice about it doing so when they *did* repay the loan.

Bradford and Bingley argued that the PPI policy was not a fixed term product, and it continued to provide benefits - Mr R could've claimed after the additional loan ended. It further said that the onus was on Mr and Mrs R to cancel the policy should they no longer want the cover.

Bradford & Bingley also said that the PPI premiums were debited to the main mortgage account and therefore Mr and Mrs R could've seen that it was still continuing from their annual mortgage statements. So they were aware that they still held cover and thus they opted to continue with the policy.

I've thought about what Bradford and Bingley said. But as I explained above, the loan application form clearly said the PPI was to cover the additional borrowing only. I've no evidence to say that they were given a choice about continuing the cover after that, or that they agreed to that continuation of cover. I don't think that was fair. So I have concluded that Bradford and Bingley should refund the premiums paid after the loan was repaid.

### **Putting things right**

Bradford & Bingley should put Mr and Mrs R in the financial position they'd be in now if the PPI policy had ended when they repaid the loan in 1991. So Bradford & Bingley should:

- Pay Mr and Mrs R the amount they paid each month for the PPI from the date the loan was repaid to the end date of the policy.
- Add simple interest to each payment from when they paid it until they get it back. The rate of interest is 15% a year until April 1993 and 8% a year from then on. †
- If Mr and Mrs R made a successful claim under the PPI policy, Bradford & Bingley can take off what they got for the claim from the amount it owes them.

† HM Revenue & Customs requires Bradford & Bingley to take off tax from this interest. Bradford & Bingley must give Mr and Mrs R a certificate showing how much tax it's taken off if they ask for one.

### **My final decision**

Overall, having considered all the evidence and arguments to decide what is, in my opinion, fair and reasonable in all the circumstances of this complaint and for the reasons I have set out above, I have decided to uphold this complaint in part. I don't uphold the part of the complaint about the sale of the policy, however, as I have explained, I have concluded that Bradford & Bingley Plc should refund the premiums paid after the additional loan was repaid in 1991.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 17 March 2022.

Jan Ferrari  
**Ombudsman**