

The complaint

Mrs and Mr W complain that Nationwide Building Society mis-sold payment protection insurance ('PPI') to them alongside a mortgage in 1999.

What happened

The PPI policy was sold to cover Mr W only if he was off sick from work.

When PPI was sold, Mr W had a longstanding disability which affected his ability to function on a day to day basis. At the point of sale, he received Disability Living Allowance because he needed continual supervision or frequent care throughout the day. That care was provided by Mrs W. Mrs and Mr W were also in receipt of a pension at the relevant time.

Mr W worked on a self-employed basis, which involved him travelling to different clients to undertake work in their homes. Mr W could not undertake such work without being accompanied by Mrs W to each job.

In addition to his longstanding disability, Mr W had been diagnosed with a mental health problem in 1997. He was prescribed antidepressants for this condition. He had also paid for private therapy.

In early 1999, he was diagnosed with a further long-term condition. He had hospital treatment and took around three months off work at that time.

Our adjudicator didn't think PPI had been mis-sold. Through their representative, Mrs and Mr W disagreed with that view.

Our adjudicator looked at the matter again and said she thought the complaint should be upheld because of Mr W's pre-existing medical conditions. Nationwide disagreed with that view. It said the policy would have only excluded a claim for Mr W's pre-existing medical conditions for the first 12 months of the cover. Nationwide said it didn't advise Mrs and Mr W to take the cover out, so it didn't have to check whether it was suitable for their needs.

As Nationwide didn't agree with our adjudicator's latest view, the matter has been passed to me to make 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.

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

I've upheld this complaint. I'll explain why below.

I agree with Nationwide to the extent that it did not advise Mrs and Mr W to buy the PPI policy. So it didn't have to check whether the cover was suitable for Mrs and Mr W. But it did have to provide them with enough information about the cover so they could decide for themselves whether it was a good fit for their needs.

Nationwide told us that it would have explained the cover to Mrs and Mr W in person. But it hasn't provided me with a lot of evidence about what was discussed. I have seen a copy of the PPI application form. I cannot see that the exclusions around medical conditions were set out on that application form. So in my view, it is unlikely the person selling PPI would have been prompted to tell Mrs and Mr W about those exclusions.

Nationwide also said that it provided Mrs and Mr W with some written information about the cover. In light of Mr W's disability, it is not clear as to how useful that written information would have been or whether he could have discerned the relevant information from that document.

With these things in mind, I can't say Nationwide told Mrs and Mr W everything it should have done about the cover. So, I have to look at whether Mrs and Mr W would have acted differently if they'd been told everything about the policy they should have been.

I appreciate Nationwide told us that Mr W would have only been excluded from claiming in respect of his medical conditions for 12 months. But Mr W had a number of longstanding conditions, including, at the point of sale, one recently diagnosed and recurring condition for which he had just taken three months off work and received hospital treatment. I do consider it likely that Mr W may well have thought he would need to make a claim within that 12-month period.

It is not entirely clear to me whether Mr W would have been able to claim because of the disability he'd had since childhood. I note that he would have been able to claim for '*disablement*', which was defined in the policy document as Mr W's '*complete inability because or accidental bodily injury or illness....to attend [his] normal occupation...*' Mr W's longstanding disability was not an accidental bodily injury. '*Illness*' is not further defined in the policy, and it is questionable as to whether the longstanding disability could be said to be an illness in the everyday meaning of the word.

I've thought about what we know about Mr W's existing resources. Nationwide accepts he had a pension and Disability Living Allowance. If Mr W lost his job, given his Disability Living Allowance, I would have expected Mrs W to have been entitled to a carer's allowance if she wasn't already receiving that payment. If Mr W became too unwell to work, in light of his long-term disability, I would have expected him to be entitled to a further sickness benefit from the (then) Department of Social Security.

Putting all of these things together then and in the particular circumstances of this case, I find it is unlikely Mrs and Mr W would have proceeded with the purchase of PPI if Nationwide had told them everything it should have done about the policy's limitations around medical conditions. The complaint is upheld on that basis.

Putting things right

Nationwide must put Mrs and Mr W in the financial position they would be in now if they hadn't taken out PPI. The policy should be cancelled if it hasn't been cancelled already and Nationwide must:

- Pay Mrs and Mr W the amount they paid each month for the MPPI
- Add simple interest to each payment from when they paid it until they get it back. The rate of interest and 8% a year.†
- If Mrs and Mr W made a successful claim under the PPI policy, Nationwide can take off what they got for the claim from the amount it owes them. It can also deduct any amounts it's already paid regarding commission and profit share.

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

My final decision

I have upheld this complaint and require Nationwide Building Society to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 28 March 2022.

Nicola Bowes
Ombudsman