

The complaint

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

What happened

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

Our adjudicator initially didn't think the complaint should be upheld. Mrs and Mr W didn't agree with that view. Our adjudicator then thought the complaint should be upheld, but this time Cumberland did not agree with that view.

As the complaint couldn't be resolved informally, it was passed to me to make a decision. I thought the complaint should be upheld and I issued a provisional decision.

My provisional decision

In my provisional decision, I said:

"Although I have only included a summary of the complaint, I have read and considered all the evidence and arguments available to me from the outset, in order to decide what is, in my opinion, fair and reasonable in all 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 this. I haven't set out that detailed information here but I've taken into account all relevant considerations in deciding this complaint.

Having done so, I've provisionally decided to uphold this complaint and I've summarised my reasons for this conclusion below.

This was an advised sale. That means Cumberland had to take reasonable steps to ensure the policy was suitable for Mrs and Mr W's needs. To help me decide whether the cover was suitable, I've looked at the terms and conditions of the policy. And I've also thought about what Mrs and Mr W told us about their personal circumstances from the point of sale.

Cumberland told us that if Mrs or Mr W had to make a claim on the PPI policy, they would have been paid £250 towards their monthly mortgage repayments if they were off sick or if they lost their jobs. £500 would have been paid if they were both out of work at the same time.

If Mrs or Mr W wanted to claim for unemployment, they had to show that one or both of them was:

- *Out of work;*
- *Registered as unemployed with the Department for Work and Pensions; and*
- *Available for and actively looking for employment.*

Looking at the mortgage application form, I can see that at the point of sale, Mr W had two jobs. He was working on a self-employed basis, which appeared to be his main source of income. He also had a second job as an employee.

So it seems to me that in order for Mr W to be able to make a successful unemployment claim, he had to be out of work. Effectively, that means he would have had to lose both jobs at the same time. Mr W's jobs were very different, so I think the chances of him being made redundant from both of them at the same time were remote.

Our adjudicator asked Cumberland for its views on this point. It said that Mr W's eligibility wasn't affected by having two jobs. It said it thought Mr W would have still been able to claim state benefits if he lost his main job because his work as an employee was for fewer than 16 hours a week.

I accept that Mr W may well have been able to claim state benefits if he lost his self-employment and was only working part-time as an employee. But the policy document says that in order to make a claim, Mr W would also have to be 'out of work'. I can't see that 'work' is defined elsewhere in the policy document. So it seems to me that unless Mr W lost both jobs, he wouldn't have been able to make an unemployment claim.

In addition to that, if Mr W lost his job as an employee, he wouldn't have been able to make a claim because it looks as though he would have been working for more than 16 hours per week in his self-employment role.

Putting all of these things together, I don't think the PPI policy was suitable for Mrs and Mr W. I don't think they would have bought the PPI policy if these limitations had been reflected at the point of sale. Subject to any further information and evidence I receive from the parties, I intend to uphold the complaint on that basis."

Neither Mrs and Mr W nor their representative responded to the provisional decision. But Cumberland replied to indicate it agreed with my provisional 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.

As neither party provided me with any further information to consider, I see no reason to depart from my provisional findings. So for the reasons set out above, I have upheld this complaint. Cumberland will need to put things right as I've set out below.

Putting things right

Cumberland 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 Cumberland must:

- Pay Mrs and Mr W the amount they paid each month for the PPI
- Add simple interest to each payment from when they paid it until they get it back. The rate of interest is 8% a year.†
- If Mrs and Mr W made a successful claim under the PPI policy, Cumberland 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 Cumberland to take off tax from this interest. Cumberland 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 uphold this complaint and require Cumberland Building Society to put things right as I have 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 15 April 2022.

Nicola Bowes
Ombudsman