

The complaint

Mrs S complains that Santander UK Plc mis-sold payment protection insurance ('PPI') to her alongside a further advance to her mortgage in 2000.

I know that when PPI was sold to Mrs S, Santander was trading as Alliance & Leicester. To keep things simple, I'll just refer to Santander in my decision.

What happened

Our adjudicator initially thought the complaint should be upheld because Mrs S had a medical condition at the point of sale. Santander objected to that view because it said Mrs S had not provided evidence of her medical condition.

Another of our adjudicators looked at the matter. He didn't think the complaint should be upheld. Through her representatives, Mrs S disagreed with that view. She said her medical condition did not affect her day to day life and she was not taking any medication for it. However, she said she had not agreed to take the PPI policy out.

As the matter could not be resolved informally, it was passed to me for a decision.

My provisional decision

I issued a provisional decision in this matter because I thought the complaint should be fully upheld. I said:

"As things stand, I think the complaint should be upheld. I'll explain why.

When it sold PPI to Mrs S, Santander had to make it clear the policy was optional and she didn't have to take it out if she didn't want it.

I've seen a copy of the mortgage application form that Mrs S completed at the point of sale. I can see there were two questions to complete in respect of PPI. The first says that Mrs S was advised to increase her PPI cover if she already had a policy and she should tick a box to amend her cover. The second box invited her to tick a box if she wanted more information about PPI. Both boxes were left blank. Accordingly, Mrs S did not indicate she wanted a PPI policy on the mortgage application form.

I have also been provided with a copy of a 'Complete Homebuyers Plan', which appears essentially to be a quotation for Mrs S's mortgage, along with other financial products. I can see that the PPI is included in the quotation. It is not clear to me how Mrs S would have been able to indicate she didn't want the policy.

I've seen a copy of the mortgage interview record, which indicates that PPI was sold by the adviser indicating 'y' for yes. Despite Santander telling us this was an advised sale, there does not appear to be a record of a PPI discussion at the meeting. In summary, I haven't seen anything to indicate Mrs S specifically agreed to take the PPI policy out or that she was aware she could refuse the policy.

Santander provided me with a copy of a letter that was ostensibly sent to Mrs S by the insurer welcoming her to her new policy. I cannot see anything in that letter to put Mrs S on notice that the policy was optional, and she didn't have to take it out if she didn't want it.

Where the facts of a case are in dispute (as they are here), I must apply the balance of probabilities. In other words, I have to decide what's most likely to have happened from the evidence before me.

Mrs S says she did not agree to take the PPI policy out. Santander says the optional nature of the PPI policy would have been discussed. But, although I have been provided with a number of contemporaneous point of sale documents, it has not been able to show me how or when Mrs S agreed to the PPI policy. Although the cover was set out as a separate cost on the mortgage quotation, I can see how that cost may have interpreted as part of her mortgage package. There was no way to 'opt out'. On balance, I cannot say it is most likely that Mrs S agreed to this PPI policy or that it was made clear to her that she did not have to take the policy out if she didn't want it.

Accordingly, I intend to uphold the complaint and require Santander to put things right..."

I asked the parties to provide me with anything further they wanted me to consider before I issued a final decision. Both parties informed me that they had nothing to add to 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 both parties had nothing further to add to my provisional decision, I see no reason to depart from my provisional findings. So for the reasons set out above, I uphold Mrs S's complaint and require Santander to put things right as I have set out below.

Putting things right

Santander must put Mrs S in the position she'd be in now if she hadn't taken the PPI policy out. I understand the policy has already been cancelled. So Santander will need to:

- Pay Mrs S the amount she paid each month for the PPI policy;
- Add simple interest to each payment from when she paid it until the date she gets it back. The rate of interest is 8% a year*.
- If Mrs S made a successful claim on the policy, Santander can deduct what she got from that claim from the amount it now owes her.

*HM Revenue and Customs requires Santander to deduct tax from this interest. It must give Mrs S a certificate to show how much tax it has taken off if she asks for one.

My final decision

I uphold the complaint and require Santander UK Plc to put things right as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 27 April 2022.

Nicola Bowes
Ombudsman