

The complaint

Mrs R says Bank of Scotland plc, trading as Halifax ("Halifax") mis-sold her payment protection insurance ("PPI").

What happened

During our investigation we found that three PPI policies were sold between 1991 and 2001 and our remit allowed us to investigate all three policies. Mrs R said that she only intended to complain about PPI sold from 1993 onwards and she does not require our findings on the policy sold in September 1991, so I will make no further comments on this policy.

Mrs R took out a second policy in December 1993 along with her ex-husband, the late Mr N. The policy cost £35 a month and provided a monthly benefit of £500. It covered Mr N only, and if he was too ill to work, or made involuntarily redundant, the policy would have paid out the benefit for up to 12 months per claim.

The third policy was taken in October 2001, by which point the mortgage was in the sole name of Mrs R. This policy cost £31.24 and provided a monthly benefit of £500. This would have covered Mrs R if she was off sick from work or made involuntarily redundant for up to 24 months per claim.

Our adjudicator didn't uphold the complaint and in my first provisional decision – I agreed with them. Mrs R disagreed with my provisional decision and provided lengthy feedback. So the complaint was passed back to me and I issued a second provisional decision findings that the policy sold in 2001 should be upheld. Below is an extract of what I said:

"Consent and optionality

Halifax had to make it clear to Mrs R that the policies were optional. And it had to get her consent before it added the PPI to her mortgage accounts. Halifax says it would have done this. But Mrs R says she was led to believe she had to have the policies in order to obtain her mortgages.

I've thought carefully about the additional points Mrs R raised on this, but my findings remain the same as my previous decision.

The sales took place a long time ago, so neither party has been able to provide the point of sale documentation. Mrs R says that she has provided this information for the 2001 sale, but I haven't seen any documents that relate to the actual time of sale, when the advice was given. I have only seen documents that were produced shortly afterwards, which do not evidence what was discussed in terms of consent and optionality. But, as I said previously, Mrs R accepts that she had the policies, so I think it's more likely than not that Mrs R agreed to each of the policies at the times of sale. So, I have focused on considering whether Mrs R was made aware they were optional or not.

Over the years, we've seen a number of Halifax cases involving various methods of sales from around the same period Mrs R was sold her PPI policies. Using what I know generally of Halifax's sales practices at the time, I think it's more likely than not Mrs R would have been given an option to take out the PPI on both occasions. I say this because, the paperwork Halifax produced for its sales, such as the mortgage offer, would usually have had a section that confirmed no insurance was required through Halifax, and that buildings insurance was the only required insurance. So, while I have considered Mrs R's recollections about what was said to her by the advisers, I haven't seen enough persuasive evidence to make me think the policies would not have been presented as optional.

I understand that the optional nature of the policies is Mrs R's main complaint point, but in order to be thorough, and to investigate the PPI sales fully, I have also looked into other aspects of the sales and I've set out my findings below.

Both parties agree that Halifax would have advised Mrs R to take the policies. This puts more responsibility on Halifax – it means as well as giving Mrs R enough information about each policy, it also had to check they were suitable. So, I've considered the case on the basis that advice was given and having done so, I've found that the policy sold in 1993 appears to have been right for Mr N and Mrs R when it was sold. I'll explain why below.

From the information available, Mr N was eligible for the policy sold in December 1993 and he doesn't seem to have been affected by any of the terms which might have made it harder for him to claim, such as having unusual employment circumstances. Although Mrs R says Mr N's employment wasn't very stable, based on the dates she's provided, it looks as though he held each position for around two years or more and fairly quickly found new jobs when his employment ended. Mrs R had mentioned that Mr N was director at one point. I looked into this as well, but I haven't found that he was a director at the time of sale. So, I haven't seen enough to say the policy wouldn't have been suitable for him.

Mrs R has confirmed that Mr N did not have a pre-existing medical condition at the time of sale, and I haven't seen anything else to make me think Mr N wouldn't have been able to benefit from the accident and sickness element of the policy.

Mrs R has explained that she had several ways of making her monthly mortgage repayments should something have happened and she believes this reinforces that she wouldn't have taken either of the policies if they had been presented to her as optional.

I have already explained why I think the policies were more likely than not presented as being optional, so I will now consider whether the advice Halifax gave Mrs R was suitable based on the other means she says she had at the time of each sale. Given the circumstances were different for each sale, I have addressed them individually below.

December 1993

I note that Mrs R has said she paid for this and the later policy by herself. But as Mr N was the one insured, I have to consider his circumstances to understand whether the policy was suitable for them or not.

Mrs R says Mr N would have been entitled some sick pay if he was off work, but otherwise I'm not aware of any additional means he would have had available to him should he have been too ill to work or lost his job. Mrs R may not think this is relevant because she says she paid for both the mortgage and PPI policy from her own personal account and with her own income. But it seems more likely than not that the mortgage was assessed on the basis of both incomes. So, without full knowledge of what other commitments Mr N may have been paying for, which Mrs R may have had to pay for if he was not receiving an income – I can't say based on what I have that Halifax was wrong to recommend this policy to them.

I have taken on board Mrs R's comments about this and I understand that she finds my comments offensive. But as part of my role, I need to explain my findings and rationale for reaching the decision I have. And the comments I've made form an important part of my reasoning. Ultimately, I have to decide whether the business did anything wrong and as Mr N's income was more likely than not included in the mortgage application – it's reasonable for the business to have recommended protecting that income even if Mrs R ended up being responsible for everything.

Mrs R has raised a concern about the benefit split of this policy – she believes it should have protected her as well as Mr N. And I think it's possible the split should have been different, but as Mrs R never attempted to make a claim on the policy, I don't think this has resulted in any financial loss to Mrs R. If Mrs R had needed to make a claim on the policy when it was in place, the split could have been investigated to ensure it was correct. But we would not look to compensate Mrs R for this given her premiums would have been the same regardless of how the benefit was split and she ultimately never needed to make a claim. If she had been named as a beneficiary, her personal financial circumstances, which I'll explain in more detail below, wouldn't have made the policy unsuitable for her.

October 2001

Halifax recommended a new policy to Mrs R, but I don't think it was right for her.

Mrs R was the sole beneficiary of this final policy, so I've considered all of her circumstances again for this sale. Mrs R says she would have been entitled to at least six months' full pay followed by six months' half pay, as well in death in service cover from her employer. Mrs R says she also had private medical insurance as well as some savings, which I note had significantly increased since December 1993 – to around £20,000.

The policy provided cover for up to 24 months and this would more often than not be useful to a consumer who had taken out a big and long-term commitment such as a mortgage. But in Mrs R's particular case, the evidence suggests that she intended to repay the mortgage within a short period of time.

Mrs R's mortgage statements show that she paid off a significant amount in December 2001, just two months after she amended the mortgage. The mortgage statements from 2002 show her new monthly repayment amount reduced to just £50.93 per month – not much more than the monthly PPI premiums.

So, within two months of re-mortgaging, Mrs R's monthly repayments were much lower and I don't think Mrs R would have thought the cost of the PPI was good value for money at this point, particularly considering she had generous sick pay and fairly substantial savings. Mrs R says Halifax was aware of her intention to do this and I think Halifax more likely than not knew this was her intention, given it happened so quickly after the mortgage was agreed and it doesn't appear to have been due to an unexpected windfall.

Considering this, I don't think Mrs R would've bought the policy if Halifax had made clear it wasn't right for her. So, I think Mrs R has lost out because of what Halifax did wrong."

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 Mrs R's case. Having done so, I've decided to partially uphold Mrs R's complaint.

Halifax responded to my provisional decision and agreed to refund the cost of the PPI for the policy sold in 2001.

Mrs R also responded to my provisional decision and accepted my findings on the policy sold in 2001. But Mrs R provided more evidence in relation to Mr N's director status to see if this had any impact on my findings for the 1993 sale.

Looking at the terms of the policy, I can't see that the terms would have restricted Mr N from making an unemployment claim even if he was a director at the time, so the further information Mrs R has provided doesn't change my provisional findings and I still think this part of Mrs R complaint should not be upheld.

I've reconsidered all of the evidence and what Mrs R has said, but I still don't have enough information to say the policy sold in 1993 was mis-sold. So, for the reasons set out above, I only uphold the policy sold in 2001.

Putting things right

Halifax should put Mrs R in the position she'd be in now if she hadn't taken out PPI in October 2001. The policy should be cancelled, if it hasn't been cancelled already, and Halifax should:

- Pay Mrs R the amount she paid each month for the PPI
- Add simple interest to each payment from when she paid it until she gets it back. The rate of interest is 8% a year †.
- If Mrs R made a successful claim under the PPI policy, Halifax can take off what she got for the claim from the amount it owes her.

† HM Revenue & Customs requires Halifax to take off tax from this interest. Halifax must give Mrs R a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons set out above, my final decision is that I uphold Mrs R's complaint in part.

Bank of Scotland plc, trading as Halifax should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 22 August 2022.

Hanna Johnson
Ombudsman