

The complaint

Mr and Mrs F complain that BoS mis-sold them a mortgage payment protection insurance, ("MPPI"), policy.

What happened

Mr and Mrs F took out the policy during a meeting in 2001, at the same time as taking out a mortgage. The policy covered them both against accident, sickness and involuntary unemployment.

Our adjudicator didn't recommend that the complaint should be upheld. Mr and Mrs F disagreed. So it came to me to decide.

On 17 June 2022 I issued a provisional decision. In this I explained that, subject to any further information I received, I didn't find that BoS had mis-sold the MPPI to Mr and Mrs F. So it didn't have to pay back **all** the cost of the MPPI to them. But I did find that BoS ought to pay back both **some** of the cost, because of the high level of commission and profit share that it got on the sale. I also found that BoS should pay Mr and Mrs F compensation for the manner in which it handled their complaint. I noted that BoS had already made a payment for the former and made an offer for the latter, at amounts I thought were fair.

Neither Mr and Mrs F nor BoS sent us any further information or comments in the time I allowed for them to do so in 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.

We've set out our general approach to complaints about the sale of payment protection insurance on our website and I've taken this into account in deciding Mr and Mrs F's case.

Because I have had no new information or comments about this complaint since I issued my provisional decision, I see no reason to change my findings or decision in it, in making my final decision.

Because the sale was so long ago, BoS no longer has any of the paperwork signed by Mr and Mrs F. And it is not required to keep papers for this length of time. So, I've had to make my decision on the basis of the information that I do have, and what we know generally about the sale of MPPI policies and, in particular, those sold by BoS. Where the evidence is incomplete, inconclusive, or contradictory, (as some of it is here), I've made my decision on the balance of probabilities – that is, what I consider is most likely to have happened, in the light of the available evidence and wider circumstances. I'm satisfied that these approaches are a fair and reasonable way of reaching my decision.

I've decided that BoS didn't mis-sell the MPPI to Mr and Mrs F. I explain why below.

Mr and Mrs F say that the sale took place during a meeting. And they don't remember their existing benefits, savings or other policies having been discussed at that time. Additionally, they say that they took the policy because they were led to believe that it was necessary and normal. But they are trying to recall matters that took place over 20 years ago. And I don't think that it's fair and reasonable to rely solely on what they remember. In the absence of any more persuasive evidence, I don't consider that I've anything on which to base a finding that BoS didn't make it clear to Mr and Mrs F that the policy was optional, or that they didn't choose to take it.

Mr and Mrs F say that BoS advised them to take the insurance. This means that BoS needed to have taken reasonable steps to ensure that the policy was suitable for them. Because of the time that has passed, I don't know what steps BoS actually took. But, in any event, I find that the MPPI was suitable. I say this, taking into account what I know about Mr and Mrs F's circumstances and by reference to the terms and conditions of the policy, because:

- Mr and Mrs F were eligible for the policy;
- Mr and Mrs F weren't adversely affected by any of the policy's main restrictions and limitations – such as those affecting someone with a pre-existing medical condition;
- Mr and Mrs F have told us that they were each entitled to something less than six months' sick pay. And that they also had some savings. But, following a successful claim the MPPI would have paid £300 a month had they both not been working. Or half that amount if only one of them was out of work. These payments would have been made for up to 12 months. And would have been paid in addition to any sick or redundancy payments or savings Mr and Mrs F would have had or been entitled to - leaving those available to help with meeting their other expenses while one or both of them wasn't earning. So I find that the MPPI could have been of use to Mr and Mrs F;
- The cost of the policy was initially about £18 a month and was competitively priced by reference to other similar policies available in the market at the time. And I haven't seen anything to suggest that the premiums were unaffordable for Mr and Mrs F. In any event, had they later felt that they couldn't afford the policy, they could have cancelled it at any time without further cost, as it was paid for monthly;
- Mr and Mrs F appear to have been earning similar amounts at the time of the sale. So I find it was reasonable for the benefit to be split evenly between them.

BoS also had to give Mr and Mrs F clear, fair, and not-misleading information about the main features of the MPPI, so that they could decide whether they wanted it or not. It's possible that the information BoS gave Mr and Mrs F wasn't as clear as it should have been. But I've found nothing on which to conclude that they didn't choose to take the policy and it seems like it would have been useful for them if something went wrong. It also looks like it was affordable. So, I don't think better information about the MPPI would have put them off taking out the cover. I say this, particularly bearing in mind the serious consequences that could have arisen had Mr and Mrs F not been able to make their monthly payments on their mortgage, which was secured on their home.

So I conclude that Mr and Mrs F haven't lost out because of anything that BoS may have done wrong during the sale. So it doesn't have to pay back all the cost of the MPPI to Mr and Mrs F.

But BoS has paid back *some* of the cost of the MPPI because:

- BoS got a high level of commission and profit share (more than 50% of the MPPI premium) - so it should have told Mr and Mrs F about that. Because BoS didn't tell Mr and Mrs F, that was unfair;
- To put that right, BoS has paid back the amount of commission and profit share that was above 50% of the MPPI premium - and I think that is fair in this case.

I've thought about everything Mr and Mrs F have said, including the poor service they say they received from BoS in its handling of their complaint about the sale of MPPI. BoS has offered to pay Mr and Mrs F £100 as compensation for this. I think this is also fair in this case.

My final decision

For the reasons I've set out above, my decision is that, Bank of Scotland plc didn't mis-sell the policy, so it doesn't have to pay back all the cost of the MPPI to Mr and Mrs F. But I find it should pay Mr and Mrs F £100 for the trouble and upset they suffered because of the way it handled their complaint.

Further, Bank of Scotland plc does have to pay back to Mr and Mrs F any commission and profit share it got that was more than 50% of the MPPI premium. I understand it has already done this, so I don't award any further compensation for this.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Mrs F to accept or reject my decision before 13 September 2022.

Ros Barnett
Ombudsman