DRN-3820905

The complaint

Miss W complains that HFC Bank Limited mis-sold payment protection insurance ('PPI') to her alongside a credit card in 2002.

What happened

Our adjudicator didn't think PPI had been mis-sold. She said there wasn't enough information or evidence to conclude that HFC hadn't made it clear the cover was optional. She also thought the PPI policy was probably suitable for Miss W's needs. However, she concluded that HFC needed to pay back to Miss W some of the commission it received from her PPI premiums.

Miss W still thought PPI had been mis-sold. She said if there was insufficient evidence to show the PPI wasn't presented as optional, there was also insufficient evidence to show that it was. Miss W also did not accept that the cover was suitable for her needs.

As Miss W did not agree with our adjudicator's 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.

I appreciate Miss W will be disappointed with my decision, but I haven't found the PPI policy was mis-sold. I also agree with our adjudicator that HFC's offer to refund some of the commission it received from her PPI premiums is fair. I'll explain why below.

Miss W told us that she thought the PPI had been sold to her by telephone. HFC hasn't been able to tell us how it thought the policy was sold. On that basis, I've accepted Miss W's recollection that the policy was sold by telephone. Neither party has been able to provide me with any contemporaneous documents from the sale. And I haven't been provided with a call recording either. That's not surprising given how long ago this policy was sold. I wouldn't expect either party to keep these records for such a long time.

The first thing for me to consider is whether it was made clear to Miss W that the PPI policy was optional, and she didn't have to take it out if she didn't want it. In the absence of a call recording, I can't say for sure what happened when the cover was sold. So, for me to decide what happened, I must apply the balance of probabilities. In other words, I have to decide what's most likely to have happened based on the evidence that's before me.

If PPI was sold to Miss W on the telephone, I think a credit agreement would have most likely been sent out to her after the sale. For the account to get up and running, she would have needed to sign that agreement and send it back to HFC. I've seen some sample agreements used by HFC at the relevant time. And I can see that in order for PPI to be added to the account, Miss W would have had to select it on the agreement. There was an equally prominent box to select if Miss W didn't want the cover.

I appreciate the initial conversation about PPI would have taken place on the telephone. But I think Miss W would have queried why the credit agreement indicated she had a choice about PPI cover if she'd been misled on the telephone. I think it would have been clear by the time she got the credit agreement that she didn't have to take the policy out if she didn't want it.

I've treated this as an advised sale. That means HFC had to take steps to check whether the PPI was suitable for Miss W's needs. To help me decide whether the cover was suitable, I've looked at what we know about the policy's terms and conditions. I've also considered what Miss W told us about her personal circumstances at the relevant time.

I can see that if she'd had to make a claim on the PPI policy, 10% of Miss W's credit card balance would have been paid for every month she was off sick from work or if she lost her job for up to a maximum of 12 months.

Miss W told us that she had some sick pay from her employer, who paid such pay generously. But from what she told us, it looks as though the PPI policy would have lasted for longer than her full sick pay. And in any event, with a PPI policy, Miss W could have used her sick pay on her other essential expenditure at what could have been a difficult time for her if she was out of work. Looking at how long Miss W had been with her employer, I think the cover would have also lasted for considerably longer than any entitlement to redundancy pay.

Miss W told us that she didn't need a PPI policy because her family members would have been able to help her out if she was out of work. I don't doubt it would have been the intention of those family members to help out. But there's no guarantee such assistance would have been available to Miss W as and when she needed it.

I understand Miss W was in good health at the time the policy was sold. So I don't think she'd have been affected by any of the policy's exclusions around medical conditions. I haven't seen anything unusual about her employment circumstances that would have stopped her from being able to make a successful claim if she needed to. With all of these things in mind, I'm satisfied the PPI policy was suitable for her needs.

That said, HFC still had to give Miss W enough information about the PPI so she could decide for herself whether it was as good fit for her needs. That information had to be clear, fair and not misleading. In the absence of a call recording, I accept its possible HFC didn't tell Miss W everything it should have done about the PPI. However, I've set out how cover could have been helpful to Miss W if she was out of work. So I can't say she would have acted differently if HFC had given her more or better information about the cover.

With all of these things in mind, I can't say the PPI policy was mis-sold. That means HFC doesn't have to pay back all of the cost of the PPI to Miss W.

However, when it sold PPI to Miss W, HFC got a high level of commission and profit share. This level of commission and profit share was more than 50% of the PPI premiums. HFC should have told Miss W about that, and its failure to do so was unfair.

To put that right, HFC has now offered to pay back the amount of commission and profit share that was above 50% of the PPI premium. I'm satisfied that offer is fair in the circumstances and it is in line with the guidance set by the Financial Conduct Authority. I understand HFC has not yet paid that compensation to Miss W.

Putting things right

HFC must pay back to Miss W any commission and profit share it got that was more than 50% of the PPI premium. It must also pay back to Miss W any extra interest she paid because of that.

HFC will need to re-work the credit card account and pay back to Miss W the difference between what she owes and what she would have owed if the commission and profit share it got hadn't been over 50% of the cost of PPI. HFC must also pay 8% simple interest* to Miss W if she paid off her credit card at some point.

*HMRC requires HFC to deduct standard rate income tax from this interest. HFC must give Miss W a certificate showing how much tax it has taken off if she asks for one.

My final decision

The PPI policy wasn't mis-sold, so HFC Bank Limited does not have to pay back all of the cost of the PPI to Miss W. But it does have to pay back any commission and profit share it got that was more than 50% of the PPI premium.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 16 January 2023.

Nicola Bowes
Ombudsman