DRN-3832915

The complaint

Mr M has complained that T&R Direct Ltd mis-sold him a mortgage payment protection insurance (PPI) policy in 2008.

What happened

Mr M contacted his independent financial advisor (IFA) in 2008 in relation to insurance cover. The IFA acted as an introducer in relation to the PPI and passed Mr M's details to T&R who subsequently sold him the policy over the phone.

I wrote a provisional decision last month in which I explained why I was minded to uphold the complaint and inviting any further comments or evidence from the parties. Mr M didn't respond. T&R said that it still didn't think it was at fault and that its already submitted evidence hadn't been looked at correctly.

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 would like to assure T&R that I have fully considered all the information and evidence that it has provided. However, having done, so I consider that Mr M's complaint should be upheld.

As Neither Mr M nor T&R made any further submissions, I will reiterate the findings I made in my provisional decision.

Mr M doesn't recall having a phone discussion with T&R in which he was sold the PPI. Rather, he thinks the policy was set up with information provided by the IFA, without his direct input. However, the sale was in 2008 and so it wouldn't be surprising if Mr M has no recollection of receiving a call. T&R has confirmed that its records show it was a phone sale and, based on the available evidence, I'm persuaded that was most likely the case.

In terms of consenting to the policy, I think Mr M would have known that he was entering into some sort of agreement to buy insurance. The question is whether he knew what sort of policy it was that he was being sold.

Mr M's discussions with the IFA at that time were based around income protection and critical illness policies, so it's possible that some confusion was created there. However, that wouldn't be a problem as long as T&R explained the main features of the policy and that it provided cover for mortgage repayments.

Looking at the paperwork provided from the time of the sale, there appear to be some fundamental issues that would lead me to conclude that the sales process wasn't very thorough. The quotation and statement of demands and needs form talks about protecting rental payments rather than a mortgage, although the actual application form mentions cover being for the existing mortgage. And the address that T&R was using for Mr M was for a property that he hadn't lived at since 2003. Although T&R have said that the policy documentation would have been sent to Mr M by email as well as by post, it hasn't been able to provide any evidence of that. So I think it's unlikely that Mr M received the policy documentation or schedule that would have alerted him to the type of cover that he had been sold.

Based on the available evidence, I consider that this was most likely an advised sale. That's because the statement of demands and needs says that: '*In order to advise you about the suitability of this insurance we have asked you a series of questions in the form of a questionnaire to obtain all the relevant info about your circs and your needs. From your responses we have determined your demands and needs to be*:'. T&R's final response letter of February 2021 also confirms that the policy was based on Mr M's requirements.

I haven't seen a copy of the questionnaire that was completed with Mr M. T&R has provided some slightly conflicting information about the questions that it asked. In an email to the IFA in August 2019 it said that a series of questions needed to be answered including details of address, cover requirements and benefit amounts. In an email to Mr M in October 2019 it said that it would have asked him a few underwriting proposal questions and then once that was completed and agreed it would have asked for his correspondence details and his bank details. I have no reason to believe that, if asked, Mr M would not have provided his current address.

T&R has subsequently told this service that it can understand not having the correct address as it used the one supplied by the IFA. It's also said that it was a non-advised sale and that it would only have asked four qualifying questions to ascertain eligibility. Having done that, it would then have asked Mr M the level of cover he required and then taken his email address and bank details to allow the insurer to set up the policy.

I've already stated above that I believe this to have been an advised sale. This means that T&R had to ensure that the policy met Mr M's needs. But the policy wasn't suitable for him because he already had existing cover (which I will expand on below).

However, even if it wasn't an advised sale, T&R still needed to provide Mr M with sufficient, appropriate and timely information to enable him to make an informed choice about whether or not to take out the policy, including drawing to his attention and highlighting – in a clear, fair and not misleading way – the main provisions of the policy and significant limitations and exclusions.

Clearly the main provision of the policy was that it was providing cover for mortgage repayments. Mr M has provided evidence that he already had a standalone mortgage PPI policy that he had taken out in 2002. I've seen evidence that he contacted the provider in October 2008 to increase the benefit amount to reflect his increased mortgage repayments. It's therefore clear that he was actively managing his existing mortgage cover to ensure that it continued to meet his needs.

As such, I've concluded that T&R did not provide Mr M with sufficient, appropriate and timely information to enable him to make an informed choice about whether or not to take out the policy. Because, if it had done so, I don't think he'd have taken out a second mortgage PPI policy when he was fully aware that he already had one. It follows that I uphold Mr M's complaint.

Putting things right

T&R should put Mr M in the financial position he'd be in now if he hadn't taken out MPPI. The policy should be cancelled if it hasn't been cancelled already and T&R should:

- Pay Mr M the amount he paid each month for the MPPI

- Add simple interest to each payment from when he paid it until they get it back. The rate of interest is 8% a year.†

- If Mr M made a successful claim under the PPI policy, T&R can take off what they got for the claim from the amount it owes him.

My final decision

For the reasons set out above, my final decision is that I uphold Mr M's complaint and require T&R Direct Ltd to pay fair compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 December 2022.
Carole Clark
Ombudsman