

complaint

This complaint is about a mortgage payment protection insurance (PPI) policy taken out in 2009. Mr S says Bank of Scotland plc mis-sold him PPI.

background

The background and circumstances leading up to this complaint, which includes Mr S's circumstances at the time of the sale as well as the PPI policy benefits, limitations and exclusions of cover, aren't disputed. So, I haven't repeated all of this information here.

Our adjudicator did not uphold the mis-sale complaint. And they said that, although Bank of Scotland plc says it didn't do anything wrong in relation to the commission on the policy, it's made an offer as if it had.

Mr S's representative disagreed with the adjudicator's opinion – they didn't raise any new or additional points but repeated the same complaint points and arguments they'd previously made.

As the complaint couldn't be resolved informally, it has been passed to me for a final decision.

my findings

Although I have only included a summary of the complaint, I have read and considered all the evidence and arguments available to me from the outset, in order to decide what is, in my opinion, fair and reasonable in all the circumstances of this complaint.

When considering what is fair and reasonable, I am required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

We've set out our general approach to PPI mis-sale complaints on our website and published some example final decisions that set out in detail how these relevant considerations may apply to PPI sales like Mr S's. I haven't set out that detailed information here, but I've taken into account all relevant considerations in deciding Mr S's complaint.

Having done so, I've decided not to uphold the mis-sale complaint. I've also considered the issue of non-disclosure of commission. But in any event Bank of Scotland plc has offered to pay back some of the cost of the PPI, so I don't think it needs to do anything more. I've summarised my reasons for each of these conclusions below.

In summary, my reasons for not upholding the mis-sale part of this complaint are:

- I think Bank of Scotland plc made it clear that Mr S didn't have to take out the PPI and he chose to take it out. I explain why I say this. From other cases we've seen which have full documentation from the time of the sale, Mr S would, most likely, have had to agree to the cover and would have known he had a choice to do so. In this case, whilst it's disappointing that neither party has been able to provide a copy of the application form, I have seen a copy of the paperwork that was sent to Mr S a few days later. It starts by saying, "*Thank you for choosing optional mortgage repayments cover (MRC) under our Halifax Total Mortgage Protection Plan (TMPP). I am pleased to confirm that your*

application has been accepted and your plan started on 8th January 2009." I think that if this had been different to Mr S's understanding from the time of the sale, he may have raised that as a complaint with the business many years earlier than he eventually did. So, thinking about that and all the submissions made in this case, and in the absence of detailed testimony from Mr S to the contrary, I think it more likely that Mr S would have known he had agreed to take the cover and that it was something he had a choice about.

- Bank of Scotland plc recommended the PPI to Mr S, so it had to check that the PPI was right for him. And the evidence about Mr S's circumstances at the time, shows that the policy wasn't fundamentally wrong or unsuitable for him. For example, Mr S was eligible for the cover and he told us that he had no sick pay or any other means to rely on in the event that long term ill health stopped him from working, or if he lost his job.

There was nothing about Mr S's employment or occupation which would have made it difficult for him to claim. And he hasn't told us about any pre-existing medical conditions that could affect his ability to claim.

- It's possible the information Bank of Scotland plc gave Mr S about the PPI wasn't as clear as it should've been. But I've found that he chose to take it out - so it looks like he wanted this type of cover. The cover wasn't fundamentally wrong for Mr S as I concluded above, or too dissimilar to what he reasonably thought he was buying from the information he was given. It also looks like it was affordable – so it seems like it would have been useful for him if something went wrong. Because of this I don't think Mr S would have declined the cover had Bank of Scotland plc done anything more.
- While the policy contained limitations on claims relating to back and/or mental health conditions, in light of Mr S's circumstances at the time of sale and despite its limitations, the policy wasn't fundamentally wrong or unsuitable for him. So, I think he would have still thought he had some good reasons to take the policy out.

Overall, I consider that Mr S would have still taken out PPI. I think the policy could provide a useful benefit in a difficult time, given his circumstances at the time. I also think the policy was sufficiently close to what it's likely he thought he was getting. And in those circumstances, I think that he would have taken out the policy in any event.

Mr S's representative has raised a number of what I consider to be general complaint points, which it says apply to all PPI complaints. These general points include: a claim that the Financial Ombudsman Service is not correctly applying the regulator's rules and guidance for handling PPI complaints; these policies represented poor value because of the number of significant exclusions and limitations of cover coupled with the low claims ratio; and the duty of utmost good faith meant Bank of Scotland plc should have disclosed the poor value and explained the significance of the limitations and exclusions and the impact it had on the chances of making a claim.

But Mr S's representative has not said how these points apply to the specific facts and circumstances of Mr S's individual complaint – just that they apply to all PPI complaints.

I have thought about these things and how they might apply in Mr S's particular case. But these points don't persuade me to alter my conclusions about what is fair and reasonable in all the circumstances of the complaint – for the reasons I've set out above I don't uphold the mis-sale element of this complaint.

This means Bank of Scotland plc doesn't have to pay back all of the cost of the PPI to Mr S.

non-disclosure of commission

As I said above, I've also considered the issue of non-disclosure of commission, including whether the non-disclosure resulted in an unfair relationship under section 140A of the Consumer Credit Act – and if so, what fair compensation would be to remedy that unfairness.

Having done so I've decided Bank of Scotland plc didn't need to disclose the commission it received – but in any event Bank of Scotland plc has offered to pay back some of the cost of PPI, so there's nothing more it needs to do. My reasons are set out below.

was there an unfair relationship?

Mr S's representative has made a number of representations about this part of the complaint including the impact of the Plevin¹ judgment and sections 140A and 140B of the Consumer Credit Act on his complaint.

In summary they have said Mr S should get back all the money he paid for the policy because: Bank of Scotland plc failed to tell Mr S about the high commission and profit-share rates paid, the low claims ratio and the restrictions and exclusions on cover. Because they say that meant the policy was poor value, I should find that Mr S wouldn't have taken out the policy had they known about the level of commission and he should receive a refund of all the premiums he paid.

But in this case, Bank of Scotland plc has told us that the commission for Mr S's PPI was less than half of what he paid for each premium. We've looked at how Bank of Scotland plc has worked this out and based on what we've seen, I'm satisfied that the commission in Mr S's case was less than half the cost of the PPI.

As that's the case, taking into account:

the effect of section 140A and B of the Consumer Credit Act;

The Supreme Court judgment in Plevin and the conclusion in that case; and

The FCA's rules and guidance for handling complaints about the non-disclosure of commission and profit share - introduced in light of the Supreme Court judgment in Plevin - which requires a business to presume that the failure to disclose commission gave rise to an unfair relationship where the business expected commission and profit share to be more than 50% of the cost of the policy

I don't think Bank of Scotland plc needed to tell Mr S about the commission. So, it follows that I don't think the non-disclosure created an unfair relationship - I don't think Bank of Scotland plc treated Mr S unfairly.

This means Bank of Scotland plc doesn't need to pay Mr S back any of the commission he paid for the PPI.

¹ *Plevin v Paragon Personal Finance Limited* [2014] UKSC 61 in which the Supreme Court concluded that the non-disclosure of commission could lead to an unfair relationship

But in any event Bank of Scotland plc has offered to give back to Mr S some of the cost of the PPI to compensate Mr S as if it had treated him unfairly. So, I don't think it needs to do anything more.

my decision

Overall, having considered all the evidence and arguments to decide what is, in my opinion, fair and reasonable in all the circumstances of this complaint and for the reasons I have set out above, I don't uphold the mis-sale element of Mr S's complaint or make any award in favour of him for this part of the complaint.

And because I've decided that Bank of Scotland plc didn't need to disclose the commission it received, it doesn't need to pay back any of the commission Mr S paid for the PPI.

But Bank of Scotland plc has offered to pay back some of the cost of the PPI to Mr S. Bank of Scotland plc should now make arrangements to pay Mr S if it hasn't done so already. If it has already made the payment Bank of Scotland plc doesn't need to do anything more.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr S to accept or reject my decision before 10 October 2021.

Douglas Sayers
ombudsman