complaint

Mrs M complains that Yorkshire Building Society ("YBS") mis-sold her a mortgage payment protection insurance ("MPPI") policy in 1991.

She does not remember agreeing to buy it and feels she did not need it.

background

I explained in my provisional decision of December 2015 why I did not intend to uphold Mrs M's complaint. This is an extract from that decision.

"As there is no record of what was said, and as the sale took place so long ago, I must decide this case on the balance of probabilities – what is most likely to have happened – given the paperwork available and what Mrs M and YBS have told me.

YBS has given us a copy of the mortgage offer made to Mrs M, and it clearly shows that she had to take the MPPI if she wanted the mortgage. It said:

"The applicant Mrs M shall be required to take out the key payment protection plan to provide a monthly benefit of £220."

Generally this sort of requirement was applied to customers who were taking out a mortgage that was very near to, or above, the total value of the property they were buying.

Contrary to what is often said, a financial business is not prevented from making payment protection insurance a condition of applying for credit, if it considers it sensible to do so. What we take a dim view of is when the insurance *is* optional, but the business fails to make it clear to the consumer that they have a choice.

In this case, I cannot know how the MPPI was presented to Mrs M during the sale. But it seems likely that she would have been made aware that the policy was compulsory during the meeting, and that this was then confirmed to her in the follow up mortgage offer.

So I am satisfied that Mrs M probably knew that she had the MPPI cover, although I accept that she did not remember having taken it some years later. Given the length of time since the sale, that does not seem very surprising to me.

I have then looked at whether Mrs M was disadvantaged by having to buy the policy.

Mrs M has told us that she had a pre-existing medical condition when she bought the policy. Our adjudicator thought the complaint should be upheld because she did not think that Mrs M was made aware that she might not be able to claim for anything relating to her condition.

Again, I cannot be certain how the policy was described to Mrs M in the meeting. But I can see that a separate MPPI application form was completed at the time of the sale, and that Mrs M has signed this in two places to confirm her understanding of the conditions of the policy and of sale. Right above her first signature, as part of the "*declaration by person(s) to be insured"* it said:

“v) I am/we are in good health and have not suffered from any disability or serious illness over the past year”

So I think that there is a good chance that Mrs M would have seen this at the point when she signed the declaration. If she was unsure what it meant or was unhappy that she was being asked to sign such a declaration; I think she would have asked the adviser about it at the time

I appreciate that with hindsight, Mrs M may now think that she should not have been sold the policy because she has been unwell with her pre-existing condition. And I agree with our adjudicator’s view that Mrs M could probably *not* have claimed for her condition – or subsequent surgery – because of the limitation of the policy relating to such conditions. But I think that Mrs M would still have agreed to take the policy at the time, even if she had realised that to be the case. I have explained my reasons for that view below.

The policy would have paid out in addition to and alongside Mrs M’s employer benefits had she needed to make a claim for any reason *other* than her pre-existing medical condition. It would also have covered her mortgage payments – as it was meant to do – for up to a year in the event that she was unable to work for any other reason, or was made unemployed.

Having looked at what Mrs M has told us about her situation at the time, I am satisfied that the policy still offered her valuable benefits, even if it did not cover her condition.

This sale took place over 20 years ago, so absolute certainty about what happened is not possible. But I think Mrs M would have decided to take the cover even if the policy had been properly explained to her. It appears that she wanted the mortgage offered her, and the cover was a requirement of securing it. Mrs M could also still have gained significant benefit and protection from the policy, particularly around unemployment. In the end, I don’t think she would have decided not to take the mortgage with YBS simply because of the theoretical risk of not being able to claim on the policy for her pre-existing condition.”

I offered Mrs M and YBS the chance to give me any further information they wanted me to consider before I made my final decision on this case.

my findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint. We have set out our general approach to complaints about the sale of payment protection insurance on our website and I have taken this into account in deciding Mrs M’s case.

YBS has not provided any further information in response to my provisional decision.

Mrs M has told us that she does not agree with my provisional decision. She has told us that she was offered other mortgages, but did not know the MPPI was added to this one and that she wouldn’t have bought it if she had known. She feels that she had to pay too much for the MPPI and that the business was making money out of her and other consumers.

As I said in my provisional decision, this sale took place a long time ago and I have had to decide what is most likely to have happened. The MPPI was compulsory – and I am satisfied that that was made clear to Mrs M. I have considered what Mrs M has said, and I have re-visited the file with care. But in the end, I believe it is more likely than not that Mrs M was aware that she had to take the MPPI to secure the mortgage she wanted – and that she accepted that fact at the time.

So despite what Mrs M has said and what she believes she remembers, I do not uphold her complaint.

my final decision

For the reasons that I have set out above, I do not uphold Mrs M's complaint. I make no award against Yorkshire Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 18 February 2016.

Roxy Boyce
ombudsman