

complaint

Mr and Mrs B complain that Chase de Vere Independent Financial Advisers Limited ("CdV") mis-sold them a mortgage payment protection insurance ("MPPI") policy in 2001.

background

In my provisional decision – the content of which is attached to, and forms part of, this decision – I explained why I thought that Mr and Mrs B's complaint should be upheld.

I then invited both CdV and Mr and Mrs B to give me any further information or evidence that 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 Mr and Mrs B's case.

Mr and Mrs B have accepted my provisional decision and not offered any further comment.

CdV has told me why it doesn't agree with my decision and has provided justification for why Mr B's claim wasn't upheld in 2010. But this is not a claims complaint, so I don't feel that provides any new information for me to consider.

CdV has suggested that I am wrong in my assessment of Mr and Mrs B's employment situation and the challenges they would face in seeking re-employment via a job centre. It has also suggested that *all* unemployment protection policies would have required Mr and Mrs B to register at the job centre.

But I think that my, or indeed CdV's, view of whether Mr and Mrs B would have had to 'sign on' at a job centre - or been able to secure roles via it - are broadly irrelevant. It is Mr and Mrs B's stated belief that they would not sign on as unemployed because the nature of their roles meant they could not secure employment that way. That view would, I believe, have shaped their thinking at the point of sale.

As noted in my provisional decision, CdV was under an obligation to recommend a suitable policy to Mr and Mrs B. Part of that obligation was to highlight any significant terms and conditions of the policy that might have affected them.

I think CdV should have explained to Mr and Mrs B that this policy had five requirements for making a successful unemployment complaint, at least one of which was means tested, one of which required registration as unemployed and all of which had to be met simultaneously to make a claim. This was so that Mr and Mrs B could make a properly informed decision about buying the policy. I have no evidence that this happened.

Had CdV met this obligation, I remain of the view that Mr and Mrs B would have decided not to buy the policy. That is because I believe that they would have decided that they would be unlikely to be able to claim on it for unemployment and so it was not of use to them.

For the reasons that I have set out, I believe that Mr and Mrs B lost out as a result of CdV's failings in this case, and I uphold their complaint.

what the business should do to put things right

I think it would be fair for CdV to put Mr and Mrs B back in the position they would be in now if they hadn't taken out the MPPI. CdV should:

- pay back to Mr and Mrs B the amount they paid each month for the MPPI.
- add simple interest to each payment from when they paid it until they get it back. The rate of interest is 8% a year[†].

If Mr or Mrs B made a successful claim under the policy, CdV can take off what they were paid for the claim from the amount it owes them.

CdV must set out for Mr and Mrs B how it has calculated the amount it pays them.

[†] HM Revenue & Customs requires CdV to take off tax from this interest. CdV must give Mr and Mrs B a certificate showing how much tax it's taken off if they ask for one.

my final decision

For the reasons set out in my provisional decision and above I uphold this complaint.

Chase de Vere Independent Financial Advisers Limited must pay compensation to Mr and Mrs B as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 12 October 2016.

Roxy Boyce
ombudsman

provisional decision

complaint

Mr and Mrs B complain that Chase de Vere Independent Financial Advisers Limited (“CdV”) mis-sold them a mortgage payment protection insurance (“MPPI”) policy in 2001.

background

Our adjudicators looked at this case and explained why they felt it should not be upheld. Mr and Mrs B did not agree with this view and asked for an ombudsman to review their case.

May I apologise to all parties for the length of time that it has taken for this case to reach an ombudsman.

my provisional 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 Mr and Mrs B’s case.

Having considered this case with care, I am currently of the view that the complaint should be upheld. I have explained my reasons below.

This sale took place a long time ago so CdV has not been able to provide much of the paperwork from the time. I don’t find that unusual or surprising. But it does mean that I will be making my decision based on the ‘balance of probabilities’ – what is *most likely* to have happened.

CdV has not told us whether it recommended the policy to Mr and Mrs B. But I think that as they had sought professional financial advice from CdV it is more likely than not that it did. That is because I think their financial situation would have been assessed and the mortgage and insurance recommended to them on the back of that assessment.

That means there was a duty on CdV to ensure that it recommended insurance that was suitable for Mr and Mrs B’s particular circumstances. It also had to provide them with sufficient clear information about the cover to allow them to make an informed decision whether to buy it. That would have included drawing to their attention any limitations or conditions of the policy that made it less than suitable.

Mr and Mrs B have told us that when Mr B was made redundant in 2010 he attempted to make a claim under the policy. But the insurer declined to pay the claim because he had to be registered to receive unemployment benefit. As Mr B was a senior professional in a relatively niche role I can understand why Mr and Mrs B say he would not be seeking employment from job centres. Mr and Mrs B have also told us that they do not think Mr B would have been eligible for unemployment benefit as that was means tested and he would not have qualified.

Mr and Mrs B’s testimony is both persuasive and detailed. And having looked at Mrs B’s employment circumstances I think she might have had similar difficulties if made unemployed.

I have looked at the policy document and I can see that there were five requirements that had to be met for an unemployment claim to be paid. These were:

“ ...you:

- (i) are no longer in employment;
- (ii) are registered as unemployed...

- (iii) have signed a jobseeker's agreement...
- (iv) are available for and actively seeking alternative employment; and
- (iv) are in receipt of appropriate benefit."

I think it would have been far more difficult for someone in either Mr or Mrs B's situation to have claimed for unemployment than for people in less specialist forms of employment.

I believe that Mr and Mrs B wanted to protect their mortgage repayments in the case of misfortune. And I think they were led to believe that the policy recommended to them reflected that wish. But while I think that Mr and Mrs B could still have claimed for accident and sickness on the policy, I think they would both have had difficulty meeting the requirements for a successful unemployment claim. They would each have had to exhaust all the more specialist recruitment avenues available to people in their roles. That would potentially have taken many months during which their mortgage repayments would still have had to be made. So I think the likelihood that they would have been in financial difficulty before they could make a successful claim was high.

I am satisfied that there were other policies available at the time which offered less demanding conditions for unemployment claims. So I don't think the policy that CdV recommended to them was suitable for their employment circumstances. CdV was under an obligation, at the point of sale, to recommend a suitable policy to Mr and Mrs B and to highlight any significant terms and conditions in respect of their circumstances. On balance, I don't think this happened.

I don't believe that Mr and Mrs B would have chosen to buy the policy if they had known about the limitations on claiming for unemployment. That is because it potentially reduced the policy's value to them significantly.

So I think that Mr and Mrs B lost out as a result of CdV's failings in this case. It follows that I currently intend to uphold their complaint.

what the business should do to put things right

I think it would be fair for CdV to put Mr and Mrs B back in the position they would be in now if they hadn't taken out the MPPI. CdV should:

- pay back to Mr and Mrs B the amount they paid each month for the MPPI.
- add simple interest to each payment from when they paid it until they get it back. The rate of interest is 8% a year†.

If Mr or Mrs B made a successful claim under the policy, CdV can take off what they were paid for the claim from the amount it owes them.

CdV must set out for Mr and Mrs B how it has calculated the amount it pays them.

† HM Revenue & Customs requires CdV to take off tax from this interest. CdV must give Mr and Mrs B a certificate showing how much tax it's taken off if they ask for one.

my provisional decision

For the reasons that I have set out in my provisional decision I currently intend to uphold this complaint.

I now invite Mr and Mrs B and Chase de Vere Independent Financial Advisers limited to give me any more information or evidence that they want me to consider before I make my final decision on this case.

That should reach us within one month of the date of this provisional decision.

Roxy Boyce
ombudsman