

## **complaint**

This complaint concerns the sale of a regular premium mortgage payment protection ("MPPI") policy applied for in July 2007, in connection with a mortgage.

The policy at the time of sale provided a monthly benefit of £750 for up to 12 months in the event of a claim for accident and sickness only. The monthly benefit was split 50/50 providing £375 of cover for Mr and Mrs H respectively if they were unable to work due to accident or sickness.

Mr and Mrs H say that Nationwide Building Society ("Nationwide") mis-sold them the policy.

## **background**

Nationwide did not uphold Mr and Mrs H's complaint. They now complain to this service. The adjudicator who dealt with their complaint also concluded that the complaint should not be upheld. Mr and Mrs H now ask for an ombudsman to review their entire complaint and to provide a final decision in relation to this matter.

## **my findings**

I have included only a brief summary of the complaint above, but I have considered all of the available evidence and arguments from the outset in order to decide what is fair and reasonable in the circumstances. In doing so I have also taken into account the law, relevant regulations and good industry practice at the time the policy was sold.

The key questions I will consider in this case are as follows:

- Whether Nationwide gave Mr and Mrs H information that was clear, fair and not misleading in order to put them in a position where they could make an informed choice about the insurance they were buying.
- If Nationwide was giving advice or making a recommendation, whether it took adequate steps to ensure the product being recommended was suitable for Mr and Mrs H's needs.

If there were shortcomings in the way in which Mr and Mrs H were sold the policy, I will also consider whether they are worse off as a result; that is, would they have done something differently – such as not taken out the policy – if there had been no shortcomings.

I have decided to not uphold this complaint. I explain why below.

### *basis of sale?*

Nationwide have told me that this application for a mortgage and MPPI was initially made by a telephone call made to "Nationwide Direct" in July 2007. Nationwide have been unable to provide me with a call recording of this sale. They have however provided me with a sample sales script from this period of time which they say their representative would have followed. Mr and Mrs H have also told me that this application was conducted via the telephone. I am satisfied this was a telephone application process with following documentation provided and completed by post. Having reviewed the script and documentation I can see that this was an information only sale. It was for Mr and Mrs H to decide about their own protection

requirements based upon the information Nationwide provided them. It was still for Nationwide to ensure that the information they provided was clear and fair.

*did Mr and Mrs H have a clear choice about the MPPI they were purchasing?*

This seems to be the crux of Mr and Mrs H's complaint. They tell me that they were never informed that the policy was optional and that they were never told they had the option to decline the MPPI. In response to our adjudicator's assessment Mr and Mrs H have also complained on the basis that they were told they had to take out the MPPI due to the amount they were borrowing by way of mortgage. In summary Mr and Mrs H complain here on the grounds that they never knew the policy was optional and that they were told, or led to believe that the MPPI was a compulsory requirement so as to secure the mortgage facility. I have considered their complaint on this basis, however, I cannot agree with Mr and Mrs H. In lieu of any recording of the telephone call I simply cannot say what was explained over the telephone. However, I have been provided with a telephone script and on this basis it appears on a balance of probabilities that Mr and Mrs H were informed about the optional nature of the MPPI. I note the script explains and guides the representative to seek and ask for consent: *"EXPLICIT CONSENT – ALL CALLS WHERE THE CUSTOMER HAS SHOWN AN INTEREST – Are you happy to apply for this policy based on the limited information I have given you today?"* I can see also that the script outlines the options a consumer can select to tailor the MPPI as they see fit for their circumstances. This would suggest to me that Mr and Mrs H knew about the MPPI options available. This is then reflected in the mortgage application form which was sent pre-populated with typed text to Mr and Mrs H at the beginning of August 2007 after this call.

The application form here records their MPPI selection as applying for accident and sickness cover only, with a £375 monthly benefit selected for Mr H and Mrs H, providing a total monthly benefit of £750 with a 12 month claim period with a 30 day excess. This suggests to me that Mr and Mrs H have tailored their protection requirements, knowing what it was they were applying for. I can see that Mr and Mrs H signed this application for the mortgage and MPPI during the middle of August 2007. This suggests to me that they have considered the application process away from the telephone conversation and had time to reflect upon what they were applying for. Furthermore, a month after this application form has been completed a "Customer Information Document" was sent to Mr and Mrs H including their requested "Insurance Illustration". This again confirms their selection in terms of the MPPI. I have noted here too that this Customer Information Document states *"It is not a condition of your mortgage that you take this through Nationwide"*. The subsequent mortgage offer issued to Mr and Mrs H in September 2007. This again clarifies that *"You are not required to buy any insurance through Nationwide"*.

I am persuaded that Mr and Mrs H applied for the MPPI and had discussed their options with Nationwide. I am satisfied that the sales script illustrates an optional process as does the documentation that followed. Although I cannot say what Mr and Mrs H were told by Nationwide, it is just as likely in my findings that Mr and Mrs H knew the MPPI was optional, have tailored the MPPI to meet their needs and have proceeded on this basis. Their complaint does not succeed on this point.

*did Nationwide provide clear and fair information to Mr and Mrs H about the MPPI?*

Both Mr and Mrs H lived and worked in the UK and were employed and aged between 18 and 65 at the point of sale. I am satisfied that they were eligible for the policy.

I have also considered the policy's significant features and limitations and it appears that neither Mr H nor Mrs H was caught by any of the restrictions or limitations of the policy that would limit its usefulness to them. They have told me they were in good health, so therefore would not be affected by terms which would preclude claims based upon pre-existing medical conditions for example. Self-employed provisions would also have been of no relevance given they were employed in full-time roles. They could therefore expect to benefit from the policy in the event of a need to claim.

I am persuaded that conversations about the MPPI took place as Mr and Mrs H have selected the level of cover they required to protect their income. Nationwide say that a leaflet would have also been provided to them about the policy features. I am told this leaflet would have been sent along with their application in August 2007. The policy summary discloses the features of the policy, however I cannot be sure that Mr and Mrs H ever received or read this summary. Even if this policy summary was not disclosed or read by them, I do not feel it would have had a bearing upon Mr and Mrs H's decision in any event. They would not have been caught by any of the MPPI's significant exclusions or limitations, so better information here would not have dissuaded them from choosing the cover.

Nevertheless, I cannot say for sure that Nationwide explained the costs of the MPPI to Mr and Mrs H in a clear and fair way. The sales script suggests that a quote is provided giving the monthly and annual premium, but this is provided in the middle of a call covering a wealth of information relating to the mortgage and separate insurances, inclusive of MPPI. I cannot say that this was explained in a clear and fair way considering the demands made of Mr and Mrs H during this call in retaining and understanding such information. I have noted too on the application form that the cost of the policy is not disclosed and indeed the mortgage offer subsequently sent to Mr and Mrs H is silent as to the policy's costs. The MPPI leaflet I have been referred to by Nationwide explains the costs; however, I cannot say that Mr and Mrs H ever received this document at the point of sale or that if they did that they read the contents of the leaflet. There is a real risk therefore of information failings in this sale in terms of explaining the policy's costs. However, before I can uphold a complaint I need to be able to say that a consumer has lost out as a result. That is to say that the information failings in this case have caused Mr and Mrs H detriment. In their case I cannot say they would have done anything different if they had been provided with the information in a clearer fashion. I go on to explain why.

Such missing or unclear information would have simply revealed that they were both eligible and that they would not have been affected by any significant exclusions or limitations of the policy. Mr and Mrs H's circumstances at the time also suggest that they had a need for MPPI despite their workplace benefits. The MPPI paid beyond Mr H's workplace benefits of full pay for 16 weeks and beyond Mrs H's entitlements of three months sick pay. Furthermore, I am persuaded by the fact that Mr and Mrs H were taking on board a significant financial commitment with a dependent child. In my findings they may well have struggled to have met their mortgage repayments after either of their sick pay had elapsed. It remains the case that the MPPI would've paid beyond this provision and in any event alongside their workplace entitlements. I have considered the position of family support, but I cannot place much weight upon this as this is wholly dependent upon third party circumstances at the time, of which I do not know about, and that such cover may not necessarily match the 12 month MPPI benefit period. The MPPI in my findings would have provided welcome breathing space for them and would have assisted if either or both were unable to work. The cost of the policy was competitive in the market place at the time and does not appear prohibitively expensive for them. I cannot say therefore that had they been

provided with further information about the policy's cost that they would have been put off this purchase in light of their circumstances at the time.

So even if the information failings in this case were addressed and that Mr and Mrs H received the documentation in a clear and fair manner, I cannot say that they would have done anything differently. The information would have simply shown them that they were eligible, could expect the full benefit of the policy and that the benefits it provided exceeded their workplace circumstances at the time and which appeared affordable. It is just as likely when considering Mr and Mrs H's circumstances that they selected and tailored the MPPI knowing it to be optional and that they wanted the MPPI knowing their own situation at the time. As such although there is a risk of information failings in this case, I cannot conclude that they would have done something different if the failings weren't present.

As a result of information failings in this case I cannot safely say that Mr and Mrs H have suffered any detriment from the MPPI product they purchased. It is just as likely, on a balance of probabilities, that even if the information was available they would not have been dissuaded from what it revealed to them. It follows therefore that the failings in this case have not caused Mr and Mrs H any detriment.

#### **my final decision**

I do not uphold this complaint and I make no award against Nationwide Building Society.

Daniel Lucas  
**ombudsman**