Financial Ombudsman Service

complaint

Mr and Mrs O complain that Nationwide Building Society ("Nationwide") mis-sold them a mortgage payment protection insurance ("MPPI") policy in 2004.

They have told us that the policy was not suitable for them because Mr O – the person covered by the policy - had a pre-existing medical condition.

background

Our adjudicator looked at the complaint and was of the view that the policy was mis-sold. Nationwide did not agree with this view. So it falls to me to make a 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 this case.

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

For ease, I have looked first at the sale of the policy and then at the review of the policy that took place in 2007.

I have looked at the sale of the policy that took place in 2004 with care. Our adjudicator thought the complaint should be upheld as she was not persuaded that Mr and Mrs O realised that Mr O's pre-existing condition meant that he could not claim on the policy for anything relating to it.

Nationwide has told us that it did not recommend the policy to Mr and Mrs O. As I have not seen any comprehensive assessment of Mr and Mrs O's insurance needs, I think that the policy was probably not recommended to them. This means that Nationwide had a duty to provide them with enough clear information about the policy to allow them to make up their own minds. But it did not have to ensure that the policy was actually suitable for their particular situation.

Given our adjudicator's assessment, I have looked particularly carefully at whether Mr and Mrs O were given clear information about the limitations on claiming for a pre-existing medical condition.

Mr O has told us that he has only taken a very limited period of time off work as a result of the condition. But he also told us that he had regular follow up appointments to monitor the condition. So I think it is likely that Mr O would not have been able to claim for anything relating to it.
I can see that the application for the MPPI was on page 7 of the mortgage application paperwork. Section 3 of the "mortgage protection declaration" said:

"I /We understand that if I/we have received, are receiving or know of any medical treatment I/we will need, that I/we will not be covered for the medical condition or disease that I/we knew about."

But this was in fairly small and close print amongst seven other declarations. I have not seen any evidence that the relevant section of the declaration was drawn to Mr and Mrs O's attention. And despite the nature of the declarations, there was no requirement on Mr and Mrs O to sign that they had read them.

Because the application - and declaration - was in the middle of the mortgage application, which was filled in on a computer, I think it could easily have been completed without any active involvement by Mr and Mrs O. So I am not persuaded Mr and Mrs O were actually made aware of the limitation on pre-existing conditions at the point when they agreed to take the cover.

Nationwide has shown us the leaflet that it says would have been given to Mr and Mrs O during the mortgage discussion to allow them to make their mind up about buying the cover. I can see that the exclusions of the policy were presented there. But I think there is a real risk that they would have been more interested in securing their mortgage than carefully reading a leaflet about insurance that was given to them during the process of applying for that mortgage.

I note that the cover was provided free of charge for 3 months as part of their mortgage deal. I think this may also have encouraged them to take the cover – as it was doubtless intended to do.

Nationwide has suggested that, as Mr O had not had time off work for his condition, it did not give him problems and that he could still have gained substantial benefit from the cover. With hindsight I accept that to be true. But it is not something that Nationwide could have predicted at the point of sale.

While I accept that Mr and Mrs O did agree to take cover offered, I do not think that they were given the information that they needed so that they could make an *informed* choice about buying it. I am not sure they would have agreed to buy it if they had known that Mr O was not eligible for a significant part of the benefit of the cover.

I have then looked at the increase in the policy benefit in 2007. I understand that this was sold alongside a further advance on Mr and Mrs O's mortgage. This time Nationwide has told us that it recommended the policy to Mr and Mrs O. This means it had to be sure that it was suitable for their situation.

There is a little more paperwork available from the time of this sale. And Nationwide has suggested that if Mr and Mrs O had been concerned about the cover they would have cancelled it at that time, rather than increasing it.

I have looked at the statement of fact that was completed at this time. I can see that the first two questions have been answered with an electronic tick in the "yes" box. But the third question, which relates specifically to pre-existing conditions, and all that followed had not been ticked either "yes" or "no". This does not make me think that the adviser systematically went through the questions with Mr O when discussing the increase in his cover. Again, there was no requirement for Mr O to sign his acceptance of the form.
I have seen nothing else that makes me think that the suitability of the policy was discussed with Mr O, or that he made an active choice to buy it in full knowledge that his condition would have limited his ability to claim on it.

As Nationwide recommended the increased cover to Mr O, it had a duty to ensure the policy was suitable for him. I do not see that it met that duty.

It follows that I think the upgrade in the policy was also mis-sold to Mr and Mrs O in 2007.

In summary, I accept that Mr O could, in all likelihood, have made a successful claim on the policy for anything that was not linked to his pre-existing condition. But it was Nationwide's responsibility to ensure that Mr and Mrs O were given clear and sufficient information about the policy to allow them to make an informed decision about buying it. I am not persuaded that Nationwide met that responsibility.

It follows that I uphold Mr and Mrs O's complaint.

what the business should do to put things right

For the reasons I have explained above, I think that Nationwide mis-sold the policy to Mr and Mrs O in 2004. It should put them in the position they would be in now if they had not bought the policy. So Nationwide should

- pay Mr and Mrs O the amount they paid each month for the cover

- add simple interest to each payment from when they paid it until they are paid the compensation. The rate of interest is 8% a year†.

Nationwide can take off from the amount it owes them what Mr and Mrs O were paid for any successful claims they made on the policy.

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

my final decision

I uphold Mr and Mrs O's complaint and require Nationwide Building Society to pay them compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs O to accept or reject my decision before 8 February 2016.

Roxy Boyce
ombudsman