

complaint

Mr S is unhappy with the buildings and contents insurance Bank of Scotland plc (the Bank) sold him with his mortgage. This is because it didn't include Legal Expenses cover.

background

I've set out the background and circumstances of this complaint and my initial thinking in my October 2015 provisional decision. I attach a copy of my provisional decision, which forms a part of this final decision.

Mr S and the Bank have seen the provisional decision and responded.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've decided to reject Mr S' complaint. I'll now explain why.

The Bank hasn't made any further comments about the complaint. Mr S hasn't raised anything new. Rather, he's said that the Bank '*deflected*' him from making a claim. I've checked Mr S' original complaint to the Bank and this service. Although he does mention the visit to his local Branch, his complaint is that he should have legal expenses on a 'comprehensive' policy. He says it was mis-sold to him.

In his response to my provisional decision, Mr S now seems to be saying he had a valid complaint under the 'malicious persons' clause of the policy. But the Bank didn't let him submit it. That's a new matter that he needs to raise with the Bank. And if he's not satisfied with its response, he can then bring it to this service. But it's not a matter I can decide in this complaint.

So what Mr S has said in response to my provisional decision, and the fact that he is now trying to make a claim under the 'malicious persons' clause, doesn't change my decision in this complaint. And I hope he and the Bank are able to work together to resolve his claim.

It follows that I've reached the same conclusions as in my provisional decision and for the same reasons.

my final decision

For these reasons and those in my provisional decision, I've decided not to uphold Mr S' complaint against Bank of Scotland plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 30 December 2015.

Mike Foster
ombudsman

copy of provisional decision

complaint

Mr S is unhappy with the buildings and contents insurance Bank of Scotland plc (the Bank) sold him with his mortgage. This is because it didn't include Legal Expenses cover.

background

In 1993 Mr S took out a mortgage with the Bank. He also bought the buildings and contents insurance that the Bank offered with the mortgage. The Bank's mortgage information leaflet described this policy as providing "*comprehensive cover against a wide range of risks*".

About seven years later Mrs S took legal action against his neighbour over a boundary dispute. Mr S won but it cost him a lot of money. He contacted the Bank to make a claim on his household insurance. He was told that it didn't include legal expenses cover. Instead he had to borrow more on his mortgage to cover the cost of the litigation.

Around the year 2000 the insurer that underwrote Mr S' policy changed. But it still didn't include Legal Expenses cover. But in 2003 the Bank added Legal Expenses insurance, underwritten by a different insurer (that specialises in legal expenses cover), to Mr S's policy for free as an introductory offer. He was then offered that extra cover for a second year for half price, which Mr S took out. And Mr S then kept this cover on his policy until he changed insurer in 2008.

Our adjudicator didn't uphold Mr S' complaint. He didn't think the policy had been mis-sold in 1993. Mr S disagreed. He provided some extra documents relating to his mortgage and insurance. He also says that his complaint also includes the Bank's treatment of him when he tried to make a buildings insurance claim for damage by a malicious person.

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. Having done so, I'm thinking not upholding Mr S' complaint. I'll now explain why.

claim for damage by malicious persons

Mr S has said that his complaint's been narrowed. He says he's also complaining about how he was treated when he tried to claim. He thinks he had a valid buildings insurance claim for '*damage by malicious persons*'. But I've looked at his complaint form and the letter he sent with it, and I don't think it includes a complaint about an attempted claim (other than for his legal expenses). This means that this hasn't been considered by the Bank in its final response letter.

I'm not able to consider a complaint until it's been made to the business in question, and the business has had at least 8 weeks to respond. So if Mr S wants to complain about the buildings claim he says he tried to make, he'll need to submit it to the Bank. And if he's not satisfied with the Bank's response, he can then bring it to this service.

when did legal expenses cover start on the policy?

Mr S has highlighted that one of the leaflets he was sent telling him about changes to his policy said "*the Legal Expenses section of your policy will continue to be underwritten by...*". He has also sent a legal expenses claim form with a handwritten note attached saying "*property protection cover...underwriting started Oct 95*". Mr S seems to suggest this meant he had legal expenses cover from then. But the note doesn't refer to legal expenses cover.

And it doesn't have any reference that connects it to Mr S or his household policy. So this doesn't really help me.

I've looked at the renewal letters and screenshots of the records of Mr S' policy. These show that legal expenses cover first showed on the policy in 2003. And the Bank's said this is when that cover was added to Mr S' policy. So I'm clear that Mr S didn't have legal expenses cover when he had the legal dispute with his neighbour.

mis-sale of household insurance policy

Whether the Bank provided advice or a recommendation to Mr S during the sale of the policy is important. It affects what the Bank was expected to do during the sale, and what was Mr S' responsibility. There's nothing in what Mr S has said or the mortgage or insurance paperwork from 1993 to indicate that the Bank advised Mr S to buy its policy or recommended it to him. But it still had to give Mr S enough information to make sure he could decide if he wanted their policy.

So I've considered what Mr S has told me about when he bought the policy and looked at the mortgage offer and XTRACOVER policy booklet (including the uncompleted application form). From these I'm satisfied that Mr S knew he didn't have to insure his property through the Bank. He says that because the Bank could refuse to accept a different policy if didn't think it provided enough cover, and because he "*didn't have time*", he decided to buy the Bank's policy. So it seems that Mr S knew the Bank's policy was optional, and he decided to take it out.

Legal Insurance cover clearly became very important to Mr S once he had to sue his neighbour. But to decide if the policy was mis-sold, I have to decide if it was important to him at the time, and if the Bank knew this. Mr S says the Bank told him that the policy was "*fully comprehensive*". I think it probably did. This is consistent with the description of the policy in the mortgage leaflet.

But Mr S hasn't said that he asked if the policy included Legal Expenses cover or that the Bank told him it did. Nor has he said he told the Bank he wanted a policy that included this cover. Looking at the mortgage information leaflet, the policy schedule and booklet, and the letters he was sent in 1993, there's nothing to suggest that Legal Expenses cover was included. But the fact that he contacted the Bank when he was suing his neighbour shows that he genuinely believed he had this protection. So I think Mr S assumed that "*fully comprehensive*" meant the policy included legal expenses cover, but didn't check.

Mr S says that it wasn't clear that the policy didn't include legal expenses cover. The legal expenses cover is a separate policy 'bolted on' to a household policy. That's why when it was added to his policy a few years later it was underwritten by a different insurer. So I wouldn't expect the Bank to have brought the lack of legal expenses cover to Mr S' attention unless he'd specifically asked for it. Similarly, I wouldn't expect a motor insurer to specify that a car insurance policy doesn't include breakdown cover.

Because I don't think Mr S told the Bank he wanted legal expenses cover, I don't think the Bank did anything wrong in not highlighting that it wasn't included. So I don't think the Bank misled Mr S.

Mr S has also said the policy was mis-sold because he had to sign to have it before he'd seen the schedule and any policy information. It's not clear how much information the Bank gave Mr S about the policy when he agreed to buy it. But I think the information he was then sent – the schedule and policy booklet – provided enough for Mr S to decide if it was right for him. And they told him he could cancel the policy. So if he'd been concerned that legal expenses cover wasn't included – and there was nothing to suggest it was – Mr S could have contacted the Bank to query this and, if necessary, cancel the policy. Because of this,

even if the Bank didn't tell Mr S enough when he bought the policy, I think what he was sent afterwards made up for this.

It follows that I don't think Mr S' complaint should succeed.

my provisional decision

For these reasons, I'm likely not to uphold Mr S' complaint against Bank of Scotland plc.

Mike Foster
ombudsman