

complaint

This complaint is about a credit card payment protection insurance (PPI) policy taken out in 2002. Mrs G says Bank of Scotland plc (“BoS”) mis-sold her PPI.

background

The background and circumstances leading up to this complaint, which includes Mrs G’s circumstances at the time of the sale as well as the PPI policy benefits, limitations and exclusions of cover, aren’t disputed. So I haven’t repeated all of this information here.

Our adjudicator did not uphold the mis-sale complaint. And they said that, although BoS says it didn’t do anything wrong in relation to the commission on the policy, it’s made an offer as if it had.

Mrs G’s representative disagreed with the adjudicator’s opinion – they didn’t raise any new or additional points but repeated the same complaint points and arguments they’d previously made.

As the complaint couldn’t be resolved informally, it has been passed to me for a final decision.

my findings

Although I have only included a summary of the complaint, I have read and considered all the evidence and arguments available to me from the outset, in order to decide what is, in my opinion, fair and reasonable in all the circumstances of this complaint.

When considering what is fair and reasonable, I am required to take into account relevant: law and regulations; regulators’ rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

We’ve set out our general approach to PPI mis-sale complaints on our website and published some example final decisions that set out in detail how these relevant considerations may apply to PPI sales like Mrs G’s. I haven’t set out that detailed information here but I’ve taken into account all relevant considerations in deciding Mrs G’s complaint.

Having done so, I’ve decided not to uphold the mis-sale complaint. I’ve also considered the issue of non-disclosure of commission. And I’ve decided BoS didn’t need to tell Mrs G about the commission it received - so BoS doesn’t need to pay back *any* of the commission Mrs G paid for the PPI. But in any event BoS has offered to pay back some of the cost of the PPI, so I don’t think it needs to do anything more. I’ve summarised my reasons for each of these conclusions below.

In summary, my reasons for not upholding the mis-sale part of this complaint are:

- I think BoS made it clear that Mrs G didn't have to take out the PPI and she chose to take it out. I say this because BoS has provided a copy of Mrs G's credit card application from the time. Looking at this I can see there is a printed cross in the box next to the words: "*Credit Card Repayments Cover*." I'm mindful that the cross is printed and not handwritten. But so is the rest of the information on the application. And from what we know of how sales like Mrs G's were carried out at this time, the application was printed out with the information and answers to the questions asked during the branch meeting – including the question about whether PPI was required or not.

So because I've not seen anything to persuade me that things happened differently in Mrs G's case – she also signed the application overall – I think it's likely that Mrs G chose to take out PPI and did so without undue pressure.

- BoS recommended the PPI to Mrs G, so it had to check that the PPI was right for her. And the evidence about Mrs G's circumstances at the time, shows that the policy wasn't fundamentally wrong or unsuitable for her. For example Mrs G was eligible for the cover and although she said she was entitled to "*full sick pay*" she's not elaborated further. I'm mindful too that she didn't have any other means she could use to make the repayments on her credit card - so she still seems to have had a need for cover. There was also nothing about Mrs G's employment or occupation which would have made it difficult for her to claim.

Although Mrs G says she had two medical conditions some time before the policy was taken out I don't think it was wrong for BoS to have recommended it. I say this because the first condition Mrs G mentioned happened around seven years prior to the sale and she's not said things were ongoing. Because of this, I don't think this condition was caught by the definition of a pre-existing condition in the policy terms – it wasn't something Mrs G sought advice or treatment for in the 12 months prior to taking out the policy.

And it's possible the same applies for Mrs G's second condition because she's not been precise with the date she suffered with it. But even if I assume it was during the 12 months leading up to her taking out the policy, I've not seen enough to persuade me that this was anything more than a one-off type injury or condition, which was cured by treatment at the time. Despite this, the policy would only have excluded this condition if it returned within the first twelve months of cover.

So taking everything into account, I don't think it was wrong for BoS to have recommended PPI to Mrs G.

- I accept it's possible the information BoS gave Mrs G about the PPI wasn't as clear as it should've been. But I've found that she chose to take it out - so it looks like she wanted this type of cover. The cover wasn't fundamentally wrong for Mrs G as I concluded above, or too dissimilar to what she reasonably thought she was buying from the information she was likely given. It also looks like it was affordable – so it seems like it would have been useful for her if something went wrong. Because of this I don't think Mrs G would have declined the cover had BoS done anything more.

- While the policy contained limitations on claims relating to back and mental health conditions, in light of Mrs G's circumstances at the time of sale and despite its limitations and exclusions, the policy wasn't fundamentally wrong or unsuitable for her. So I think she would have still thought she had some good reasons to take the policy out.

Overall, I consider that Mrs G would have still taken out PPI. I think the policy could provide a useful benefit in a difficult time, given her circumstances at the time. I also think the policy was sufficiently close to what it's likely she thought she was getting. And in those circumstances, I think that she would have taken out the policy in any event.

Mrs G's representative has raised a number of what I consider to be general complaint points, which it says apply to all PPI complaints. These general points include: a claim that the Financial Ombudsman Service is not correctly applying the regulator's rules and guidance for handling PPI complaints; these policies represented poor value because of the number of significant exclusions and limitations of cover coupled with the low claims ratio; and the duty of utmost good faith meant BoS should have disclosed the poor value and explained the significance of the limitations and exclusions and the impact it had on the chances of making a claim.

But Mrs G's representative has not said how these points apply to the specific facts and circumstances of Mrs G's individual complaint – just that they apply to all PPI complaints.

I have thought about these things and how they might apply in Mrs G's particular case. But these points don't persuade me to alter my conclusions about what is fair and reasonable in all the circumstances of the complaint – for the reasons I've set out above I don't uphold the mis-sale element of this complaint.

This means BoS doesn't have to pay back all of the cost of the PPI to Mrs G.

non-disclosure of commission

As I said above, I've also considered the issue of non-disclosure of commission, including whether the non-disclosure resulted in an unfair relationship under section 140A of the Consumer Credit Act – and if so, what fair compensation would be to remedy that unfairness.

Having done so I've decided BoS didn't need to disclose the commission it received – but in any event BoS has offered to pay back some of the cost of PPI, so there's nothing more it needs to do. My reasons are set out below.

was there an unfair relationship?

Mrs G's representative has made a number of representations about this part of the complaint including the impact of the *Plevin*¹ judgment and sections 140A and 140B of the Consumer Credit Act on her complaint.

¹ *Plevin v Paragon Personal Finance Limited* [2014] UKSC 61 in which the Supreme Court concluded that the non-disclosure of commission could lead to an unfair relationship

In summary they have said Mrs G should get back all the money she paid for the policy because: BoS failed to tell Mrs G about the high commission and profit-share rates paid, the low claims ratio and the restrictions and exclusions on cover. Because they say that meant the policy was poor value, I should find that Mrs G wouldn't have taken out the policy had they known about the level of commission and she should receive a refund of all the premiums she paid.

But in this case, BoS has told us that the commission for Mrs G's PPI was *less* than half of what she paid for each premium. We've looked at how BoS has worked this out and based on what we've seen, I'm satisfied that the commission in Mrs G's case was less than half the cost of the PPI.

As that's the case, taking into account:

- the effect of section 140A and B of the Consumer Credit Act;
- The Supreme Court judgment in *Plevin* and the conclusion in that case; and
- The FCA's rules and guidance for handling complaints about the non-disclosure of commission and profit share - introduced in light of the Supreme Court judgment in *Plevin* - which requires a business to presume that the failure to disclose commission gave rise to an unfair relationship where the business expected commission and profit share to be more than 50% of the cost of the policy

I don't think BoS needed to tell Mrs G about the commission. So it follows that I don't think the non-disclosure created an unfair relationship - I don't think BoS treated Mrs G unfairly.

This means BoS doesn't need to pay Mrs G back *any* of the commission she paid for the PPI. But in any event BoS has offered to give back to Mrs G some of the cost of the PPI to compensate Mrs G as if it had treated her unfairly. So I don't think it needs to do anything more.

my decision

Overall, having considered all the evidence and arguments to decide what is, in my opinion, fair and reasonable in all the circumstances of this complaint and for the reasons I have set out above, I don't uphold the mis-sale element of Mrs G's complaint or make any award in favour of her for this part of the complaint.

And because I've decided that Bank of Scotland plc didn't need to disclose the commission it received, it doesn't need to pay back any of the commission Mrs G paid for the PPI.

But Bank of Scotland plc has offered to pay back some of the cost of the PPI to Mrs G. Bank of Scotland plc should now make arrangements to pay Mrs G if it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 10 October 2021.

Paul Featherstone
ombudsman