

complaint

Mr D complains Premier Writers Ltd ("Premier Writers") mis-sold him a payment protection insurance ("PPI") policy.

background

Mr D applied for a loan through a finance company during a phone call in 2006. At the same time he took out a PPI policy to cover his repayments. The finance company who sold the loan and PPI policy acted for Premier Writers, so Premier Writers is responsible for how the policy was sold and this complaint.

Mr D took out a loan of £17,500 over fifteen years. He said he took out the loan to pay off a secured loan, an unsecured loan and a car loan. Added to the loan amount was £944 for the PPI premium, £370 for a legal fee and £1,000 for a broker fee. The PPI policy would've covered Mr D for the first three years of the loan. Interest of £1,316.80 was added to the PPI premium, meaning PPI would've cost £2,260.80 over the fifteen year loan term.

Our adjudicator upheld Mr D's complaint. He said, in summary:

- it wasn't clear to Mr D he had a choice about PPI;
- PPI was recommended to Mr D but it wasn't suitable for him; and
- it wasn't explained to Mr D that PPI wouldn't cover him for the full loan term.

Premier Writers didn't agree with the adjudicator, so the complaint has been passed to me for a decision.

Premier Writers said, in summary:

- the sale wasn't concluded on the phone and the documents it sent to Mr D made it clear PPI was optional;
- Mr D wasn't told he had to have PPI;
- it should've been clear to Mr D that PPI wouldn't cover him for the whole of the loan term;
- a regular premium policy would've been unsuitable for Mr D because he was likely to miss payments;
- it's the loan that's still being repaid after the three year PPI term, not the PPI; and
- Mr D effectively only paid £244 (plus interest) for PPI because he received a discount on the broker fee for taking PPI.

I issued my provisional decision in December 2015. I provisionally found that Mr D's complaint should be upheld. I also thought Premier Writers Ltd needed to pay Mr D £2,200.47 to put things right at that time.

I've summarised my provisional decision below.

After listening to the call between Mr D and Premier Writers I thought that PPI was sold over the phone.

I didn't think it would've been clear to Mr D he had a choice about PPI. From the conversation I thought Mr D would've thought he had to have PPI because the loan was going to be secured on his property. I didn't think it would've been clear to him that PPI could be cancelled if he let the lender know about any other cover he had, or if he didn't have other cover he still had a choice about PPI.

Mr D said he wanted to keep the total amount he borrowed less than £20,000, and I thought the adviser should've told him he could've removed PPI to reduce the total amount rather than reducing the amount of the loan. I thought if Mr D had known this was an option he would've chosen to remove the PPI.

Although Mr D agreed to take PPI during the call, this was right at the end of a call when he would've felt everything had been completed. I didn't think he would've felt he could ask for PPI to be removed at that stage in the process.

Premier Writers said the loan documents showed PPI was optional. But the loan documents were sent to Mr D after PPI was taken out over the phone. And the adviser didn't say Mr D should pay particular attention to the paperwork. So I thought he would've just relied on what had been said on the phone.

Taking everything into account, I didn't think it was made clear that PPI was a separate product and Mr D had a choice about taking it. I thought Mr D would've thought it was part of the loan and he had to have it. And I didn't think Mr D would've taken PPI if he knew he had a choice about it.

There was another reason why I thought Mr D's complaint should be upheld. Premier Writers recommended the policy to Mr D, so it should've made sure it was suitable for him. And if it couldn't make a recommendation which met all of Mr D's needs, it should've told him that. I looked at Mr D's circumstances and I didn't think the policy was suitable for him.

If Mr D had cancelled the policy early he wouldn't have received a refund in proportion to the time he'd had it. Because Mr D was repaying other loans early, I thought it should've been clear to the adviser that there was a chance Mr D would repay the loan early. Because the policy didn't offer a full refund if it was cancelled early, it wasn't suitable for Mr D.

It wasn't enough for Premier Writers to say that its single premium policy was more suitable than a regular premium policy. It should've made sure its recommendation was suitable – and if it couldn't do that it should've told Mr D where the policy didn't meet his needs.

Premier Writers placed weight on the fact it sent out paperwork to Mr D after the call which gave him all the information he needed. But I thought the adviser should've made sure the policy was suitable for Mr D during the call before she recommended it. She shouldn't have relied on Mr D to decide if it was suitable for him based on the documents sent to him after he'd taken it out.

Overall I thought Mr D lost out because of what Premier Writers did wrong. I didn't think he would've taken PPI if he'd known he had a choice about it. And I didn't think Mr D would've bought the policy if he'd known it was unsuitable for him.

I explained to Premier Writers that I didn't think the discount it said Mr D received on the broker fee should affect the compensation it should pay to him. I said this was because I didn't know if Mr D did receive a discount based on what I'd seen, and even if he did he wouldn't have realised he was making a saving. So I didn't think it was fair for this to be a factor in what Premier Writers needed to pay him.

In response to my provisional decision, Premier Writers said:

- my analysis was based on a lack of knowledge of the lending market and a thin understanding of CCA regulations;
- it's unacceptable to expect it to pay 8% interest for the time it's taken for the Financial Ombudsman Service to deal with the case - over three years;
- I've dismissed the fact that the broker fee was reduced simply because I couldn't find reference to this in the insurance documentation. As the fee related to the loan I wouldn't find reference to this in the documentation. It will provide a letter from the lender confirming the reduction made to the broker fee because Mr D took out the PPI policy. If Mr D hadn't taken the policy, he would've paid an extra £700 to the broker. This should be deducted from the PPI premium, which will affect the loan interest Mr D paid. Mr D benefitted because the insurance reduced the borrowing for the fees and this should be taken into account;
- it doesn't understand my point about 'savings.' It's simply pointing out what the cost would've been without insurance which is what the FCA require in calculating detriment. The premium didn't increase the total borrowing by £944 but by £244 when the £700 saving on the broker fee is taken into account; and
- even if the loan was mis-sold the detriment isn't as I've calculated it. And any award would mean Mr D would gain financially, rather than being put back in the position he would've been in had he not bought any insurance.

Premier Writers has now sent me a letter from the lender which says the broker fee would have been higher if PPI hadn't been taken. It says the broker fee would've been £900 instead of £200, so Mr D saved £700 by taking PPI.

Mr D replied to say he thought he'd paid £3,176 as a final PPI payment when he repaid his loan in April 2011. He sent me a letter from the lender's solicitors acknowledging payment of £19,522.05 as a redemption figure. He also sent us a copy of his statement which shows the APR on his loan was 14.9%. I replied to Mr D to explain that I didn't think he'd paid £3,176 as a final PPI payment because the PPI premium was £944. I also explained that I'd used the figures on the statement of price for PPI to calculate the interest rate I'd used in the calculations in my provisional decision and I thought this was correct.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We've set out our general approach to complaints about the sale of PPI on our website and I've taken this, and everything else that's relevant, into account in deciding Mr D's case.

I still think Premier Writers did some things wrong when it sold PPI to Mr D and now it needs to do something to put things right.

Premier Writers says it shouldn't have to pay 8% per year simple interest for the time this complaint has been with this service. It says the case should have been dealt with within four months. But there were delays in Premier Writers replying to us when it applied to go into liquidation. And our adjudicator originally told Premier Writers the complaint should be upheld back in November 2012 – so it had the opportunity to settle much earlier. I think it's fair for Mr D to be compensated for the time he's been out of pocket. So Premier Writers needs to pay 8% per year simple interest to the date it pays the compensation.

Premier Writers also says the full broker fee Mr D needed to pay was discounted because he bought a PPI policy. It thinks this should be reflected in the calculations when working out how much it needs to pay to put things right.

As I explained in my provisional decision, there's no mention of the discount in the paperwork about Mr D's loan and PPI. And the discount wasn't mentioned in the phone call where Mr D took out PPI. Premier Writers says there's no reason for the discount to be referred to in the insurance documentation as it related to the loan. But if Mr D was given a discount on the broker fee because he took PPI, I'd expect this to be explained in the information given to him so he could make an informed decision.

I've not seen anything from the time of sale to show Mr D received a discount on the broker fee through taking PPI. The lender's now sent us a letter saying the broker fee was reduced from £900 to £200 because Mr D took PPI. But Mr D was charged £1,000 for a broker fee, not £200 – so I can't see how the lender's figures show he received a discount. I still don't think I've seen enough to say if he received a discount or not. And even if I did accept there was a discount on the broker fee which saved Mr D some money, I also need to consider if it's fair to take any saving into account in calculating Mr D's compensation.

For me to be able to say Premier Writers could deduct that saving from the amount it needs to pay Mr D, it would need to show me he knew he was making a saving, have kept those savings and have them readily available. This is based on a principle set out by the Court of Appeal in *R v ICS ex parte Bowden* [1994].

In my provisional decision I said that even if I accepted Mr D did get a discount, I don't think he would've realised he was making a saving. It wasn't mentioned in the sales process, so I don't think Mr D knew anything about it. I also think it's likely any savings would've been spent as part of Mr D's everyday spending. This means Mr D wouldn't be left with access to those savings. So I don't think I could fairly take them into account. I disagree with Premier Writers' point that Mr D would be better off if it pays him compensation in line with my instructions.

Mr D says he thinks he paid £3,176 towards PPI when he repaid his loan in 2011, but I don't think he did because the PPI premium was £944. I think this is more likely to be the extra fees and charges that were added to his loan – and which he had to pay when he repaid it.

The APR on the loan statement Mr D sent to me was different to the interest rate I've used in the calculations in my provisional decision (and to the rate shown on Mr D's loan agreement.) But the interest rate of 13.98% which I've used in my calculations is based on the statement of price for PPI which was given to Mr D during the sale. When I considered

the interest rates I saw that they didn't repay the loan over the 15 year term if Mr D paid £12.56 each month towards PPI. This is why I needed to work out what rate did repay the loan over the 15 year term, and this shows a flat rate of 13.98%. I think this is the right information to use as I'm looking at the sale of PPI and not matters to do with the loan.

In my provisional decision I set out how Premier Writers should work out Mr D's compensation. I haven't seen anything to make me think it should be calculated differently.

what Premier Writers should do to put things right

I think Premier Writers should pay £2,232.44 to put Mr D in the position he would be in now if he'd taken his loan without PPI.

Because of the way the PPI was added to the loan it meant the loan was for more than it should have been. It also meant Mr D paid more than he should've each month. And he also paid more than he should've when he paid off the loan early. So he needs to get that money back.

I worked out how much Premier Writers should pay by calculating:

- the difference between what Mr D paid each month on the loan and what he would have paid each month without PPI

I've worked this out to be £665.68 (53 x £12.56) ⁱⁱ

- the difference between what Mr D paid to close the loan and what he would've paid to close the loan without PPI

I've worked this out to be £852.94 ⁱⁱⁱ

- simple interest calculated on a yearly basis on the extra Mr D paid from the date of each payment up until today (the rate of interest is 8% a year) ⁱⁱⁱ

I've worked this out to be £713.82. But HM Revenue & Customs requires Premier Writers to deduct tax at the basic rate from any simple interest payments. ^{iv}

my final decision

For the reasons set out above, I uphold Mr D's complaint. Premier Writers Ltd should follow the instructions on putting things right as I've set out.

The total Premier Writers Ltd should pay before tax is £2,232.44 as it stands at the date of this decision – and after tax that's £2,089.68 to Mr D with £142.76 passed to HM Revenue & Customs.

If Mr D accepts this final decision before the deadline noted below, it will be legally binding on both sides. Premier Writers must then pay Mr D promptly and no later than 28 days after the date of this decision. After this time, the addition of simple interest will resume at £0.49 per day before tax – and after tax that's £0.39 to Mr D with £0.10 passed to HM Revenue & Customs.

I'd like to remind both sides that the law establishing the Financial Ombudsman Service – the Financial Services and Markets Act 2000 (FSMA 2000) – made an ombudsman's decision legally enforceable in court.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 11 April 2016.

Helen Sutcliffe
ombudsman

notes:

/i/ Mr D borrowed an extra £944 to pay the PPI Premium. He was given a *statement of price* that shows if Mr D kept paying his loan over the full 15 years, he'd pay £1,316.80 in interest on the extra he borrowed. It also shows he needed to pay £12.56 extra each month to cover the cost of the PPI.

The loan started in October 2006 and, based on what the finance company told us, Mr D repaid it in full in April 2011. I've assumed Mr D made the first payment to the loan in November 2006, a month after it started. This means he would've made a total of 53 payments before paying off the loan. I've assumed the interest rate stayed the same throughout.

/iii/ The *statement of price* doesn't show the rate of interest Mr D was charged on his loan. But using Microsoft Excel and applying the 'rate' function to the figures above – I estimate the interest rate to be 13.98%.

Mr D paid £665.68 over 53 months (53 x £12.56) to the loan for the PPI. With an interest rate of 13.98%, it meant he paid £555.20 in interest and £91.06 towards what he borrowed for the PPI. So £833.52 was left to pay for the PPI. He also had to pay penalty interest on this amount (£19.42). So he had to pay an extra £852.94 to close the loan because of the PPI.

/iiii/ Simple interest is calculated by multiplying each payment amount (£12.56 every month for 53 months beginning November 2006 plus £852.94 in April 2011) by the daily interest rate (8%/365) and by the number of days between when payment was paid and the day it is paid back.

/iv/ The total simple interest Premier Writers Ltd should pay before tax is £713.82 – and after tax that's £571.06 to Mr D with £142.76 passed to HM Revenue & Customs.