complaint

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

background

Mr F applied for a loan with a finance company in 2008. He took out a PPI policy at the same time.

When it sold the PPI, the finance company acted for Premier Writers. So Premier Writers is responsible for how the policy was sold, and so has to answer this complaint.

Mr F borrowed £8,500 using his home as security. He used the money to repay arrears that had built up on his mortgage.

He took the loan over 20 years. The PPI was set up to cover his loan payments for the first three years. The policy would cover the loan payments if Mr F had an accident, was too ill to work or his business failed. Mr F paid £1,274 for the PPI with a single upfront premium that was added on top of the £8,500 loan. So the PPI premium increased the amount Mr F borrowed. And he could've ended up paying for the PPI for the full 20 year loan term, even though the cover would only last for three years.

I issued my provisional decision in December 2015. In my provisional findings I said that I thought Premier Writers recommended the PPI to Mr F. So it needed to take adequate steps to make sure the policy was suitable for his needs *before* recommending it to him. And it should've also told Mr F about the important features of the policy in a clear, fair and not mis-leading way. I didn't think it did either of these things and I explained why this led me to think Mr F's complaint should be upheld.

Mr F arranged his loan and PPI over the phone. And having listened to the telephone calls during which the sale took place, I was concerned whether the recommendation for Mr F to take out PPI was right for him based on his circumstances at the time.

Mr F's employment status was discussed and it was established that he was self-employed. But at no point during any of the calls were the particular terms which are relevant to a self-employed person making a claim for business failure discussed.

To make a claim for business failure Mr F would've had to meet specific conditions. The policy summary explains that to make a successful claim Mr F's must be *"unable to work through compulsory liquidation of your own business."* It seemed to me that this condition would've made it very difficult for Mr F to claim. Mr F would most likely want to claim under the policy during periods when he simply could not find work. But the policy wouldn't allow him to do this. Instead it seemed he'd have to wind up his business and then he'd need to set up a completely new business if he found work again in the future. So I didn't think this type of policy was suitable for Mr F.

Premier Writers said it wasn't responsible for the terms of the policy and concerns about this should be directed to the insurer. But it was responsible for the advice it gave and for making sure the products it recommended were right for its customers. It also had a responsibility to clearly tell Mr F how the policy worked. And I didn't think it did either of these things.

I also had concerns about whether the policy gave Mr F the flexibility he needed to make changes to his loan. Mr F's PPI was charged as a single premium at the very beginning and added to the loan. And he paid for the policy in monthly instalments as part of his regular loan repayments. After the first 30 days Mr F would only get a limited refund of any unused premium. This would cause a problem if Mr F needed the flexibility to cancel the policy (or repay a loan early) because he'd get back much less than the amount he would still need to pay on his loan. So the policy would be bad value for Mr F if there was some likelihood he repay his loan within the first three years.

During the sales calls, the cancellation terms were only mentioned briefly and no detail was given about the true implications of early cancellation. And Mr F wasn't asked anything about whether he was likely to repay the loan early. Given what I said about the refund, I thought this was important information that would be needed to make sure the PPI was suitable.

Mr F was taking out a loan to repay debts. And this was the second time in a year that he had taken a loan for this purpose. So taking this into account I thought there was a reasonable chance that he might want to refinance these debts in the future – and possibly within the policy term. If Premier Writers had properly considered Mr F's circumstances, it would've realised this and taken this into account when deciding whether to recommend the PPI. If it had done this, I thought it should've known the recommendation didn't meet all Mr F's needs and pointed this out. And I thought Mr F was unlikely to have taken out the PPI if Premier Writers had done this.

Premier Writers said the PPI could be transferred to another loan – meaning it would continue and be used to cover any new loan that was taken out. But it wasn't discussed during the calls that this would happen if he repaid the loan early. And I found it more likely Mr F would've thought the PPI would be cancelled when he repaid the loan.

There's also a good chance the PPI wouldn't be appropriate to cover any new borrowing – a new loan would probably have a different term and repayment amount. So I thought the benefit of the PPI being portable was limited. And there's still a good chance Mr F would've wanted to cancel the PPI early if he'd known it wouldn't be cancelled automatically when he repaid his loan. I thought Premier Writers still needed to take into account the limited refund that would be available if the PPI was cancelled early when it was making its recommendation.

In summary, I thought Mr F had lost out because Premier Writers didn't do what it should've done when it sold the PPI to him – both in terms of the advice it provided and information it gave about the PPI. And, if Mr F had known this; I didn't think he would've taken it out.

I then looked at how Premier Writers should put things right for Mr F. The way the loan for the PPI policy was added to Mr F's main loan meant he borrowed more and paid more each month than he should have. So I thought he needed to get that money back. I set out what I thought Premier Writers should pay Mr F.

In deciding what was fair compensation I took into account what Premier Writers said about Mr F receiving a discounted broker fee because he bought the PPI policy. Premier Writers said this meant Mr F was actually *better off* buying the PPI policy as without it the loan would've been more expensive.

But this wasn't mentioned during the sales calls. And I'd have expected it to have been mentioned, or even highlighted during the sale. So I didn't think Mr F would've been aware that he was getting a reduced broker fee because he bought PPI – or that it was a consideration for him.

I also thought about whether even if he did get a discount on the broker fee and saved some money, would it be fair to take any saving into account. I thought it would only be fair to deduct that saving if Premier Writers could show me Mr F knew he was making a saving, had kept those savings and had them readily available – as per the principle set out by the Court of Appeal in *R v ICS ex parte Bowden* [1994].

I didn't think Mr F would've realised he was making a saving because I didn't think he knew anything about a discount. I also thought it was likely any savings would've been spent as part of Mr F's everyday spending. This meant Mr F wouldn't be left with savings he can access or I could fairly say should be taken into account.

I invited both parties to let me have any comments on my provisional decision before I issue my final decision on the complaint.

Neither Mr F nor Premier Writers have made any further comments or provided any more information for me to consider.

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 F's case.

Having done so, and as neither party has provided anything more for me to look at, I still think Premier Writers mis-sold PPI to Mr F and it needs to do something to put things right.

what Premier Writers should do to put things right

I think Premier Writers Ltd should pay £3,106.96 to put Mr F 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've been. It also meant Mr F paid more than he should've each month. So he needs to get that money back.

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

- The difference between what Mr F paid each month on the loan and what he would've paid each month without PPI

  I've worked this out to be £1,518.72 (96 x £15.82) [i]

- The difference between what Mr F needs to pay to close the loan and what he would need to pay to close the loan without PPI

  I've worked this out to be £1,101.19 [ii]

- Simple interest calculated on a yearly basis on the extra Mr F 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 £487.05. 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 including those in my provisional decision, I uphold Mr F's complaint and tell Premier Writers Ltd to follow the instructions on putting things right as I've set out.

The total Premier Writers Ltd should pay before tax is £3,106.96 as it stands at the date of this final decision – and after tax that's £3,009.55 to Mr F with £97.41 passed to HM Revenue & Customs.

If Mr F accepts this final decision before the deadline noted below, it will be legally binding on both sides. Premier Writers Ltd must then pay Mr F promptly and no later than 28 days after the date of this decision. After this time, the addition of simple interest will resume at £0.68 per day before tax – and after tax that's £0.54 to Mr F with £0.14 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 F to accept or reject my decision before 11 April 2016.

Daniel Little
ombudsman

Notes:

[i] Mr F borrowed an extra £1,274 to pay the PPI Premium. He were given a *statement of price* that shows if Mr F kept paying his loan over the full 20 years, he'd pay £2,522.80 in interest on the extra he borrowed. It also shows he needed to pay £15.82 extra each month to cover the cost of the PPI.

The loan started in February 2008 and Mr F is still repaying the loan. I've assumed Mr F made the first payment to the loan in March 2008, a month after it started. This means he's made a total of 96 payments to date. I've assumed the interest rate stayed the same throughout.

[ii] The *statement of price* doesn't show the rate of interest Mr F 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 F paid £1,518.72 over 96 months (96 x £15.82) to the loan for the PPI. With an interest

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rate of 13.98%, it meant he paid £1,345.91 in interest and £172.81 towards what he borrowed for the PPI. So £1,101.19 is left to pay for the PPI.

[iii] Simple interest is calculated by multiplying each payment amount (£15.82 every month for 96 months beginning March 2008) 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 £487.05 – and after tax that's £389.64 to Mr F with £97.41 passed to HM Revenue & Customs.