

complaint

Mr T complains about the way redress has been calculated as a result of the mis-sale of a mortgage endowment policy. Countrywide Assured Plc is responsible for the sale.

background

Mr T brought his complaint to the business which upheld it. A calculation was carried out to see if Mr T had lost financially as a result of the sale of the policy. The calculation was carried out the way the regulator and ourselves have said it should be done. Having carried out that calculation the business said Mr T was no worse off by having this policy. Therefore nothing was due to him.

Unhappy with that Mr T brought his complaint to this service. One of our adjudicators looked at the way the calculation had been carried out. He thought the business had carried out the calculation properly. He thought the business was right when it said Mr T hadn't lost out as a result of the sale of the policy complained about.

Mr T said he understood that but was particularly concerned that the business was not refunding to him the commission paid when the policy was sold. He wants the commission, paid as part of his monthly premiums, to be refunded to him.

Although the adjudicator and Mr T had further discussions the adjudicator did not change his opinion that the calculation was correct and that no separate payment should be made. Mr T remained unhappy and asked for an ombudsman's final decision. The file has been passed to me.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. My decision is that the way the business has calculated redress is fair and the way it should be calculated. No redress is due (although see my closing comments below). I understand this is not what Mr T wants.

Redress is complicated. It is not surprising if Mr T had difficulty in being confident he's been fairly treated. Redress is intended to put someone in the position they would be in now if the business had not got things wrong. Here, redress has been calculated on the basis that if this policy had not been taken out then Mr T would have had a repayment type mortgage instead. On the evidence here I think that has to be right. If carrying out that calculation no loss has been incurred then that means nothing is due.

I understand what Mr T is saying. However to seek to "split" the redress into individual parts by treating the commission separately would require a very different approach.

I can see why Mr T is concerned about the commission payments. However he is, in effect, getting those payments back. In the "credit" side of the calculation is the whole amount of the monthly premiums. If for instance the policy was worth nothing then Mr T would get the whole of that premium back-which by definition would include any commission.

Whether the business pays 10% or 90% of the premium in commission to the selling agent makes no difference. Under the contract between the business and the selling agent (which is not in my jurisdiction to consider) there is usually some kind of "claw back" or "penalty"

provision such that commission for mis sales may be reclaimable by the business against the advisor.

That however is not relevant here. What is relevant and I am satisfied has happened is that Mr T has had the whole of the premium including any commission accounted for in the calculation.

My final point is that upholding this sale means the business has not only to carry out the calculation it has. It also, if required, should meet life cover costs going forward and the reasonable costs of changing to a similar repayment type mortgage deal with the existing lender. It may be Mr T has already considered that but if not he may wish to take advice about any issues.

my final decision

My final decision is that I do not uphold this complaint. My decision is that the business has calculated redress properly and no payment is due to Mr T. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 11 April 2016.

Mike Boyall
ombudsman