

complaint

Mr C and Miss S say Legal & General Partnership Services Limited (L&G) mis-sold them a mortgage payment protection insurance (PPI) policy.

background

I set out the circumstances leading to the complaint, and my initial findings on it, in my provisional decision earlier this month. That decision included the following:

“In 2007, a broker acting as an appointed representative of L&G arranged a mortgage for Mr C and Miss S. The mortgage had a term of 15 years. At the same time, it sold them a PPI policy covering Miss S if she couldn’t work due to disability or unemployment.

Ten years later, Mr C and Miss S wanted to make a claim under the policy as Miss S had become unemployed. They were told Miss S could no longer claim the benefit as the policy ceased to provide cover beyond her 65th birthday – and she’d already turned 65 by the time she became unemployed.

Mr C and Miss S complained to L&G on the grounds that, when they bought the policy in 2007, they did so on the understanding that it would cover Miss S for the duration of the mortgage. L&G said the policy terms were clear and that she remained unable to claim. But it accepted there were concerns about how the policy was sold and offered them £150 as compensation in recognition. The insurer cancelled the policy and refunded the premiums they’d paid after Miss S turned 65 and became unable to claim under it.

Still unhappy, Mr C and Miss S brought their complaint to us. Our adjudicator looked into the complaint and recommended it be upheld. He felt L&G had led Mr C and Miss S to reasonably expect that the policy would continue to cover Miss S throughout the 15-year loan term and did not explain to them that the cover would end at 65.

L&G didn’t agree with the adjudicator’s recommendation, so the complaint was passed to me to review afresh.

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. We’ve set out our general approach to complaints about the sale of PPI on our website and I’ve taken this into account in deciding this case.

Having done so, I intend to uphold Mr C’s and Miss S’ complaint. I’ll explain why.

It’s not in dispute that, under the policy terms, Miss S’ cover ended when she turned 65. And that, as she turned 65 before she became unemployed, the claim isn’t covered under the strict terms of the policy. What is in dispute is what L&G should do about how it presented and sold the policy to Mr C and Miss S in 2007.

L&G accepts errors were made when it sold the policy to Mr C and Miss S. For example, in its final response letter to them of January 2018, it said:

"You sent me a copy of the Demands and Needs letter you received dated 13 March 2007. This clearly states the term of the MPPI policy was 15 years. As stated earlier there is no fixed term for a MPPI policy, but I believe the letter was misleading, and gave you the impression the cover was available for a longer period than was possible."

I agree with L&G that the advice and information it gave Mr C and Miss S was misleading – I think they were led to believe the PPI would cover Miss S for the duration of their mortgage. I think that was an important consideration for Mr C and Miss S as I can see, from the same letter, that L&G made a number of recommendations regarding insurance to Mr C and Miss S. The letter concludes:

"As you have indicated that you do not want Redundancy Income Protection, Mortgage Income Protection, Critical Illness Lifestyle Protection or Death Income Replacement aspects of your family protection need areas we identified, my recommendation is limited to the protection of your mortgage only. Therefore, you would not have any protection for your family outside of the mortgage."

In other words, despite L&G's advice, Mr C's and Miss S' financial priorities lay in protecting their mortgage rather than in protecting their income more generally. Clearly, Mr C and Miss S felt it was important that their mortgage be protected and made L&G aware of that fact. Everything Mr C and Miss S have said in taking their complaint to L&G initially, and more recently to us, has been consistent with that.

Where insurance has been mis-sold there are a number of things that can be done to put things right for the consumer, depending on the circumstances. In many situations, we'd expect the seller to put the consumer back in the position they'd have been in had they not been sold the policy by paying compensation equal to a refund of their premiums plus interest. In other cases, where the consumer was given a reasonable expectation that a rejected claim would be paid, we'd expect the seller to do something different. For example, it might be more appropriate for the seller to pay the consumer the value of the claim if that's more than a refund of premiums.

In the circumstances, I consider that Mr C and Miss S reasonably expected that the claim they eventually made would be paid. I don't think any of the information L&G gave them in the years between the sale and Miss S becoming unemployed would have corrected the expectation they had.

L&G said the policy was annually renewable and did not have a fixed term. While that might be the case, the point is that it didn't make Mr C and Miss S aware of that during or after the sale. At least one significant document, as discussed above, indicates the policy did have a fixed term of 15 years and I think it unlikely L&G's representative said or did anything to correct that misinformation. And in my view that's what Mr C and Miss S are likely to have relied on most given that the policy was sold in a face-to-face meeting.

L&G also argues that no mortgage PPI would have covered Miss S beyond 65 and that her claim isn't payable in any event because she couldn't meet the policy requirement that she be registered for Jobseeker's Allowance due to her age. That may be true, but it doesn't alter the fact that Mr C and Miss S had a reasonable expectation that the policy would respond to their claim in a certain way or that L&G should now compensate them for that. I don't believe her age, or the consequences that would ordinarily flow from her reaching 65, should stop her from effectively having this claim paid.

In any event, I'm also aware of the Association of British Insurers' 2013 publication "Consistent Policy Interpretations Payment Protection Insurance – Statement of Principles For The Payment Protection Insurance Industry" (the statement), which I believe represents good practice in this area. The statement sets out that insurers shouldn't insist on the insured being registered with the benefits office – even if the policy requires it – if there's alternative ongoing evidence of unemployment and regular job search activity. The statement says this could be a combination of job applications, invitations to interviews and job rejections.

I don't know if Miss S can provide alternative evidence to L&G. But, if she can, it might be that any lack of registration with the benefits office wouldn't in itself stop her from claiming under the policy.

L&G also says the information gathered by its representative in the Client Review document showed Miss S was expecting to retire at 65. Which presumably it would argue shows it was reasonable to sell her a policy that ended at the same time. But I don't think much significance can be attached to that bearing in mind 65's the default retirement age commonly given by people when asked. I also note Miss S was the main wage earner and I find it unlikely she really did intend to give up work at 65 while, at the same time, taking out a mortgage that was due to run until she was 70.

my provisional decision

For the reasons given, I'm minded to uphold this complaint. I intend to require Legal & General Partnership Services Limited to:

- assess the claim, or arrange for it to be assessed, taking into account what I've said above about applying the policy terms fairly; and*
- if the claim's payable, deduct an amount equal to the premiums Mr C and Miss S would have paid had the policy remained in place for the duration of the claim; and*
- add interest[†] to the benefit payments at the annual simple rate of 8%, calculated from the date each payment was due until the date of settlement; and*
- reimburse Mr C and Miss S for any charges and fees incurred because the claim wasn't paid, with interest[†] at the above rate calculated from the date Mr C and Miss S paid the charges and fees until the date of settlement; plus*
- pay £150 in total as compensation for the distress and inconvenience caused, as per its previous offer (if it hasn't paid it already).*

[†] HM Revenue & Customs requires Legal & General Partnership Services Limited to take off tax from this interest. Legal & General Partnership Services Limited must give Mr C and Miss S a certificate showing how much tax it's taken off if they ask for one."

I asked the parties to send me any more information they wanted me to consider before I looked into the case again.

L&G didn't reply by the date I gave. Mr C and Miss S, on the other hand, replied that they were struggling financially due to Miss S having lost her job without being paid in full for the work she'd done. Mr C was only able to work part-time time due to disability and had recently been unable to work at all for a period because of poor health. They owed money to

various organisations and had borrowed money from family, which had all been very stressful.

my findings

I've considered 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 into account in deciding Mr C's and Miss S' case.

Having done so and after carefully considering all of Mr C's and Miss S comments, including but not limited to those made in their response to my provisional decision, I'm not changing the award I proposed. I'll explain why.

In bringing their complaint to us earlier this year, Mr C and Miss S said they wanted L&G to:

"Honour the policy in full and help pay the mortgage or give us every penny we have paid plus compensation from 2007 to date because they have mis-sold us this policy or made a big mistake"

Later in the complaint form, Mr C and Miss S said although they'd been offered £150 as compensation for their distress they'd rejected it on the basis they wanted their claim paid instead.

Mr C and Miss S didn't provide any further comments following the adjudicator's letter of April 2018 in which he told them about his recommendations and asked them to send in any more information they wanted the ombudsman to consider.

My provisional award, which was slightly more favourable to Mr C and Miss S than the adjudicator's recommendation, meant they stood to have their claim paid *and* receive £150 compensation. I remain of the view that the award goes far enough in the circumstances and given the strict policy terms wouldn't ordinarily allow the claim to be paid due to Miss S' age. And in the light of the other aspects of the award, most significantly where I also directed L&G to *"reimburse Mr C and Miss S for any charges and fees incurred because the claim wasn't paid, with interest... calculated from the date Mr C and Miss S paid the charges and fees until the date of settlement."*

I realise Mr C and Miss S have unfortunately had money problems after Miss S lost her job, and which have been compounded by their ill health. But, taking everything into account, I still believe my provisional award was fair given L&G's failings.

my final decision

For the reasons given, I've decided to uphold this complaint. I require Legal & General Partnership Services Limited to:

- assess the claim, or arrange for it to be assessed, taking into account what I've said above about applying the policy terms fairly; and
- if the claim's payable, deduct an amount equal to the premiums Mr C and Miss S would have paid had the policy remained in place for the duration of the claim; and
- add interest[†] to the benefit payments at the annual simple rate of 8%, calculated from the date each payment was due until the date of settlement; and
- reimburse Mr C and Miss S for any charges and fees incurred because the claim wasn't paid, with interest[†] at the above rate calculated from the date Mr C and Miss S paid the charges and fees until the date of settlement; plus
- pay £150 in total as compensation for the distress and inconvenience caused, as per its previous offer (if it hasn't paid it already).

[†] HM Revenue & Customs requires Legal & General Partnership Services Limited to take off tax from this interest. Legal & General Partnership Services Limited must give Mr C and Miss S a certificate showing how much tax it's taken off if they ask for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Miss S to accept or reject my decision before 26 July 2018.

Nimish Patel
ombudsman