

complaint

Mr C has complained that he was mis-sold two payment protection insurance ("PPI") policies by Aberdeen Mortgage Management ("AMM").

background

Mr C took out a 24 year mortgage in November 2006 for £74,834. The mortgage was arranged by AMM, acting as mortgage brokers, and Mr C was sold a PPI policy at the same time. The policy protected Mr C against accident, sickness and unemployment and would've paid out a benefit of £500 for a maximum of 12 months. The policy cost £1,575 and it was paid for out of the mortgage advance. Mr C was covered for the first three years of the mortgage term.

Mr C re-mortgaged in January 2009 and this was again arranged through AMM. This time Mr C borrowed £82,694 over 22 years and he again took out a PPI policy. This policy ran for five years and would've paid out a benefit of £485.50 in the same circumstances as the first policy. The policy cost £2,550.

Mr C told us what he said happened. He said he wasn't given a choice about taking out PPI and he was told he needed it to get the mortgage. Mr C has also said he wasn't given all the information he needed and that he would've found it hard to use the policies as he had a pre-existing medical condition.

AMM didn't send us any information or give its version of events.

Our adjudicator upheld Mr C's complaint. But, as AMM didn't agree, the case was passed to me for a decision.

I issued a provisional decision in October 2013. I provisionally found that Mr C's complaint should be upheld. I thought AMM needed to pay him £6,260.68 to put things right.

I explained that that I'd considered all of the available evidence and argument to decide what's fair and reasonable in the circumstances of this complaint.

I noted that Mr C had told me what he said happened when he took out PPI, but AMM hadn't sent in any information. I said I thought his recollections had been clear and consistent and, without any information from AMM, I was going to rely on what he said.

Mr C said both times the PPI was sold in a meeting and that he was advised to take it out. I thought it's more likely that advice would've been given if the policy was sold face to face. As there wasn't any evidence from AMM about how PPI was sold, I treated both sales as advised. So I thought AMM had to make sure the recommendation was suitable for Mr C's needs, but it also had to give him information that was clear, fair and not misleading so he could decide whether to take out the policy.

was the optional nature of PPI made clear to Mr C?

Mr C said he thought he had to have PPI with his mortgage. So I looked at whether it was made clear that he didn't have to take PPI. I didn't think it was made clear.

I saw that both mortgage offers said that Mr C didn't need to take out any insurance, but I thought the offers would've been sent out *after* the meetings and *after* Mr C had agreed to take out PPI. I thought Mr C would've relied on what he was told at the meeting. Based on what Mr C told me, I didn't think he was given a real choice about taking out PPI and AMM didn't make it clear that PPI was optional.

I thought I could've upheld the complaint based on this failing alone, but I also found other failings in the way PPI was sold.

did Mr C's medical history make the policies unsuitable for him?

Mr C suffered from a medical condition that was diagnosed in 2005 and operated on in 2006. Under the terms of both policies he wouldn't have been covered for time off work caused by the existing medical condition. I didn't think that Mr C was told about this exclusion and I didn't think the policy was suitable for him because of this. I didn't think Mr C would've taken out PPI if he knew about this, as his medical condition was the most likely reason he'd need to take time off work.

was the first policy suitable for Mr C?

Mr C would've paid more each month as he was adding the single premium cost to his mortgage and would pay interest on it. I didn't think it was made clear he would still be paying for PPI for 21 years after the cover ended.

If Mr C wanted protection for the full term of the mortgage he would have to take out a new policy after three years. But then Mr C would end up paying for a new policy at the same time as paying for the old one that had been added to the mortgage. And if Mr C had claimed under the first policy or his circumstances changed, any new one that he took out might have exclusions or limitations that might not have applied to the original policy, so that would mean that Mr C could find it hard to claim. It could also mean the overall cost could be higher and the level of cover might be less.

I also noted that Mr C was re-mortgaging. This meant that AMM had to consider whether he might do this again in the future. If Mr C re-mortgaged during the three year period he was covered by PPI (which he did), the policy couldn't have been cancelled and he wouldn't have got a refund for the unused part of his premium. I didn't think AMM considered this when it recommended Mr C take out PPI.

was the second policy suitable for Mr C?

The second policy ran for five years on a 22 year mortgage. For the same reasons as the first policy, I didn't think it was suitable for Mr C's needs. If Mr C cancelled his policy early, unlike with the first policy, he would've got a refund. But the refund he got wouldn't have covered what he had left to pay for PPI – it would've been less.

Given everything, I didn't think that the recommendations given by AMM were suitable. I thought Mr C took out PPI as he thought he had to have it for his mortgages and that it offered him protection. But I didn't think he would've taken it out if he'd been properly advised about the policies and their shortcomings.

Mr C replied to my provisional decision and said he agreed with it.

AMM didn't reply to my provisional decision, but I'm satisfied it received a copy of the decision.

my findings

I've again 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, and everything else that's relevant, into account in deciding Mr C's complaint.

As neither Mr C nor AMM have given me any new evidence or arguments, I'm not going to change my provisional decision. I still think AMM mis-sold both PPI policies.

what AMM should do to put things right

I think AMM should pay £6,443.17 to put Mr C in the position he would be in now if he'd taken his mortgages without PPI.

The way the PPI was added to the mortgage meant that the mortgage was larger than it should have been. It also meant Mr C paid more than he should have each month. And his outstanding balance is larger than it should be. So he needs compensation to put things right.

I worked out how much AMM should pay by calculating:

- the difference between what Mr C paid each month on the mortgage and what he would've paid each month without PPI;

I've worked this out to be £2,445.68ⁱⁱ

- the difference between what Mr C would have to pay to close his mortgage and what he would have had to pay to close his mortgage without PPI;

I've worked this out to be £3,232.38ⁱⁱⁱ

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

I've worked this out to be £765.11 but HM Revenue & Customs requires AMM 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 C's complaint. Aberdeen Mortgage Management should follow the instructions I've given on putting things right as I've set out.

The total Aberdeen Mortgage Management should pay before tax is £6,443.17 as it stands at the date of this decision – and after tax that's £6,290.15 to Mr C with £153.02 passed to HM Revenue & Customs.

If Mr C accepts this final decision before the deadline noted below, it will be legally binding on both sides. Aberdeen Mortgage Management must then pay Mr C promptly and no later

than 28 days after the date of this decision. After this time, the addition of simple interest will resume at £1.40 per day before tax – and after tax that's £1.12 to Mr C with £0.28 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 C to accept or reject my decision before 29 December 2015.

Mark Hutchings
ombudsman

notes:

ii Mr C borrowed an extra £1,575 to pay the PPI premium with the first mortgage on 1 November 2006. This was included in the £74,834 he borrowed in total. The mortgage interest rate was fixed until 31 December 2008 at 6.04% and then changed to 2.1% above the Bank of England base rate. When Mr C re-mortgaged on 15 January 2009 he was charged a penalty of one month interest.

He borrowed an extra £2,550 to pay the PPI premiums with the second mortgage. This was included in the £82,694 he borrowed in total. The mortgage interest rate was fixed until 3 February 2014 at 5.49%. I understand this mortgage is still running and I've assumed it moved to the standard variable rate on 3 February 2014.

I've assumed that all repayments were made on time and in full.

iii As Mr C's mortgage is still running, this remaining PPI amount should be removed from the outstanding mortgage balance, so that Mr C makes no further payments towards his PPI policy. AMM should pay the £3,232.38 directly to Mr C and he should use this amount to reduce his mortgage balance, to avoid paying further interest.

iiii Simple interest is calculated by multiplying each payment amount by the daily interest rate (8% / 365) and multiplying the result by the number of days between the payment being made and the day it is paid back. I have assumed the redress payment will be made on 27 November 2015.

iv The total AMM should pay before tax is £6,443.17 – and after tax that's £6,290.15 to Mr C with £153.02 passed to HM Revenue & Customs.