

complaint

Mr W complains that Jelthat Limited (Jelthat) mis-sold a payment protection insurance (PPI) policy to him, when he bought a car on hire purchase (HP).

background

In October 2005 Mr W bought a car on HP through Jelthat, trading as Newport Mazda. He also bought a single premium PPI policy. That policy was to cover his repayments if he was off work ill or injured, or lost his job. And it would pay off the balance of the loan if he died.

Mr W has raised various issues about how Jelthat sold the PPI to him. These include that he didn't want or need it, but was told he should buy it to help him get the credit. And that its cost, benefits and terms weren't explained to him.

Our adjudicator took the view the complaint should be upheld. She didn't think there was enough evidence to show that Mr W had been given the chance to confirm he wanted PPI.

But Jelthat doesn't agree, so it's been passed to me for a decision.

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 W's case.

Having done that, I'm upholding Mr W's complaint. I'll explain why.

It's not very clear how Mr W came to buy the PPI. It seems to be agreed between Mr W and Jelthat that he signed an HP agreement, during or after a meeting at Jelthat's premises. That agreement provided for PPI to be added to the loan. And Jelthat then faxed the agreement to the lender. But Mr W and Jelthat have given us very different versions of the surrounding events.

Mr W says he didn't want PPI, but Jelthat told him he should buy it, because it said the lender preferred loan applications to be made with a request for PPI. He says Jelthat's representative told him this would 'smooth the way' to getting the loan, and it could then be taken off again, once he'd got the loan.

But Jelthat says it was actually Mr W who asked for the PPI. It says it only sells PPI if a customer asks for it, and that Mr W 'specifically requested' it.

So many years after the sale, memories may not be very reliable. But there's very little paperwork available from the time either, to help me understand what happened. The only documents I've been given from the sale are the HP agreement that Mr W signed, and a sales invoice from Jelthat. I've had to decide what's most likely to have taken place, based on these and on what Mr W and Jelthat have told us about the sales process.

Jelthat doesn't accept that it sold the PPI to Mr W. But from the paperwork I've seen, I think it did. Mr W says it was Jelthat who sold it to him. The lender agrees. The loan agreement

was signed at Jelthat's premises. I've seen nothing to show that Mr W spoke or dealt directly with the lender about PPI, around that time. And Mr W says he didn't.

So I think Jelthat's responsible for the sale of PPI to Mr W, even though it says it didn't routinely offer or advertise PPI to customers, and even if it was the lender who then set up the policy. In my view that's the case whether Mr W asked for PPI, or Jelthat offered it to him or advised him to have it.

It's not clear to me what, if any, written information Jelthat gave Mr W about PPI, or when he got it. Or what, if anything, he was told by Jelthat's representatives about it.

I've looked carefully to see whether Jelthat made Mr W aware that it was up to him to decide whether or not to buy PPI, and that he didn't have to do so to get the credit. And in my view, Jelthat hasn't been able to show clearly that Mr W was given a fair choice whether to buy PPI, and that he then decided to do so.

It's possible that it was Mr W who first raised the subject of PPI. But on balance, I think that's unlikely. I see that the HP agreement Mr W signed refers to the PPI as 'optional'. But by the time he was signing it, the sort of PPI policy he was going to take out, and its cost, had already been typed into the agreement.

So either the agreement was just presented to Mr W to sign, with the PPI already included, or there'd been a discussion between Mr W and Jelthat about PPI and he'd agreed to have it. But despite being asked, Jelthat hasn't explained clearly to us what its process was, for this sale. So I don't know which of these is right.

There's a box in the agreement, which a customer who wants PPI is supposed to tick. He's then meant then to sign below it, to say he understands he's buying PPI. I see that in Mr W's agreement, this box wasn't ticked. The agreement didn't include a 'no' option to tick. Mr W did sign his name in the section about PPI. But he didn't do so in the place where he should've done.

Mr W tells us he had the paperwork put in front of him, and was told to 'quickly sign your name on this for me where the crosses are'. And I see that there are faint crosses visible where he did sign, including in the PPI section. So that's in line with what he's told us.

Overall, I've carefully considered the documents I've been given, and what Mr W and Jelthat have told us about the circumstances of the sale. With such different versions of events, it's been a difficult case to decide. I can't be sure what happened. It's possible Mr W asked for PPI, knowing he could choose whether or not to buy it.

But Mr W's account of what happened has been consistent, and I think it's plausible. Jelthat hasn't in my view explained clearly how Mr W's policy came to be sold, or what it had told or given to him before he bought it. And I don't think the way the HP agreement was completed is enough to show that Jelthat had made it clear to Mr W that he had a choice, and that he'd decided to have it.

At the very least, I think there was some confusion about this sale. From what I've read and been told, I don't think Mr W knew that whether he bought PPI wouldn't affect the lender's decision on giving him the credit. So I've not been shown clearly that he was given a fair choice, and had the chance to say whether or not he wanted PPI - and decided to have it.

On balance, based on the information I've been given, I think it's fair and reasonable to uphold Mr W's complaint. And I don't need to come to a view on any other points he's raised about the sale.

Jelthat says the HP agreement was incomplete, and so it feels the lender shouldn't have gone ahead with the PPI. But in my view, that's a matter between Jelthat and the lender. I think Jelthat sold the PPI to Mr W, and I've seen statements which in my view show that he paid for it. So this issue doesn't affect my decision.

putting things right

Mr W tells us he paid off the loan early. But he borrowed extra to pay for the PPI, so his loan was bigger than it should've been. He paid more than he should've each month and it cost him more to repay the loan than it would've. So Mr W needs to get back the extra he's paid.

So, Jelthat should:

- Work out and pay Mr W the difference between what he paid each month on the loan and what he would've paid without PPI.
- Work out and pay Mr W the difference between what it cost to pay off the loan and what it would've cost to pay off the loan without PPI.
- Add simple interest to the extra amount Mr W paid, from when he paid it until he gets it back. The rate of interest is 8% a year[†].
- If Mr W made a successful claim under the PPI policy, Jelthat can take off what he got for the claim from the amount it owes him.

[†] HM Revenue & Customs requires Jelthat to take off tax from this interest. Jelthat must give Mr W a certificate showing how much tax it's taken off, if he asks for one.

my final decision

For the reasons I've explained, I've decided to uphold Mr W's complaint.

Jelthat Limited is to pay Mr W the compensation I've described.

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

Chris Langford
ombudsman