complaint

Mr G has complained about a payment protection insurance (PPI) policy, sold with a mortgage, in March 2004. The sale was carried out by a broker called The Money Group Ltd (TMG), however TMG wasn't within our jurisdiction at the time of sale. When it sold the policy TMG was acting as the agent of CIGNA Europe Insurance Company SA-NV (CIGNA) who underwrote the policy. It is my understanding that CIGNA has accepted responsibility for sales like this one, and by extension, complaints about those sales. So if TMG did anything wrong in this sale, CIGNA would ultimately be responsible for putting that right.

background

Mr G is represented in his complaint by a claims management company. They say the PPI was mis-sold for a number of reasons, including that Mr G thought he had no choice other than to take out the PPI if he wanted to get the loan, and he was given inadequate information about the policy.

I have attached my provisional decision dated 17 August 2015 which forms part of this final decision. In my provisional decision I set out why I was intending to uphold this complaint. I asked both parties to let me have any further comments or evidence they would like to be considered by 17 September 2015.

Mr G hasn't added any further submissions or arguments to the case. However, CIGNA has provided a detailed response to my provisional decision which includes the following:

- CIGNA won't contest our jurisdiction in this particular case – but reserves its position on the question of agency for future cases;

- CIGNA disagrees that the sale was an advised sale. It says that TMG only provided information to Mr G and it was up to him to decide whether he wanted to buy the PPI. It points out that Mr G indicated the sale wasn't advised. So it is incorrect to conclude that TMG owed Mr G a duty of care

- It considers that the provisional decision states the choice of product was not appropriate on two contradictory grounds. In CIGNA's view it was highly unlikely at the point of sale that the PPI was both inadequate for a 25 year loan and inherently unsuitable due to a need for flexibility and/or proportionate refund rights; and

- Even if CIGNA accepts that TMG owed a duty of care to Mr G to recommend a suitable product, it is unclear what Mr G's precise circumstances were at the time the loan was taken out, so the argument that the loan wasn't suitable for him, is speculative.

I have addressed CIGNA's further points in this final decision, as detailed below.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having carefully considered the additional points raised by CIGNA, I remain of the view that this complaint should be upheld.

I will address each of the points CIGNA has made, in turn.

I note that CIGNA is not contesting my jurisdiction to consider this complaint against it, on this occasion; however, it reserves its right to contest our jurisdiction to consider future cases.

In my provisional decision, I referred to the fact that Mr G had indicated, on one of the documents provided, that the sale was not advised. However, I also pointed out that he selected monthly premium, when in fact the policy was a single premium. I said it was understandable that his recollections from the time of sale are likely to have faded over time, and I concluded, on the basis of the other available evidence, (in particular that the PPI was discussed during the same meeting in which advice was being given on the mortgage, and that the meeting took place in Mr G's home), the sale was likely an advised sale. CIGNA's submission on this point, which simply reiterates the fact that Mr G indicated the sale wasn't advised, doesn't cause me to change my mind about whether or not the sale was likely advised.

I disagree with CIGNA's submission that it was highly unlikely at the point of sale that the PPI was both inadequate for a 25 year loan, and inherently unsuitable due to a need for flexibility and/or proportionate refund rights. I say this because I consider the cover provided by the policy was both too short and too inflexible for the purpose of early termination. Although an adviser may not be able to predict that a consumer will refinance within the term of the insurance, he has a duty of care to establish whether the consumer may have a need, or inclination to refinance within the relevant period. As the mortgage Mr G took out with TMG was taken for the purpose of re-mortgaging existing debts, it should have been reasonably foreseeable to TMG that Mr G needed a policy which included enough flexibility to exit without financial penalty, should his circumstances change, given Mr G's tendency to re-mortgage existing debt. Mr G was persuaded to buy PPI on the basis of advice that didn't take account of the possibility that he might have wanted to cancel.

The need for fair cancellation terms doesn't automatically mean that Mr G had no need for insurance which covered the whole 25 year loan. I don't consider the two needs are mutually exclusive. If Mr G was prepared to pay a significant sum for insurance, I think he needed to be advised to purchase cover that was both adequate and flexible. In my view, if the seller had clearly explained to Mr G how the product worked, and had given him better advice and information, he would have realised that it offered relatively little cover for a large and inflexible premium. I think it likely he would have declined to buy this, or any other PPI.

Finally, CIGNA also submits that even if it accepts TMG owed a duty of care to Mr G to recommend a suitable product, it isn't clear that the product recommended wasn't suitable for him at the time of sale. I disagree. As I have explained in the previous paragraphs, Mr G was re-mortgaging existing debts. It was therefore reasonably foreseeable that he might again; re-mortgage those debts in the future. The seller ought to have taken this into account when recommending a suitable product.

Having carefully considered CIGNA's further submissions, I conclude they haven't caused me to change my mind about upholding this complaint. So, I see no reason to depart from the conclusions set out in my provisional decision of August 2015. It follows that I uphold this complaint and make an award against CIGNA Europe Insurance Company SA-NV.

fair compensation

I understand that Mr G repaid his loan in 2009. However, he borrowed extra to pay for the PPI, so his loan was bigger than it should have been. He paid more than he should have each month and it cost him more to repay the loan than it would have. So Mr G needs to get back the extra he's paid.

So, CIGNA should:

– Work out and pay Mr G the difference between what he paid each month on the loan and what he would've paid without PPI.

– Work out and pay Mr G the difference between what it cost to pay off the loan and what it would have cost to pay off the loan without PPI.

– Add simple interest to the extra amount Mr G paid from when he paid it until he gets it back. The rate of interest is 15% a year until April 1993 and 8% a year from then on†.

– I understand that Mr G made a successful claim in 2004 (and was paid approximately £2,399.94). CIGNA can take off what Mr G got for the claim, from the amount it owes him.

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

my final decision

My final decision is that I uphold this complaint and require CIGNA Europe Insurance Company SA-NV to pay Mr G fair compensation in accordance with the calculation I have set out above

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 6 November 2015.

Carolyn Harwood
ombudsman

COPY PROVISIONAL DECISION

complaint

Mr G has complained about a payment protection insurance (PPI) policy, sold with a mortgage, in March 2004. The sale was carried out by a broker called The Money Group Ltd (TMG), however TMG wasn't within our jurisdiction at the time of sale. When it sold the policy TMG was acting as the agent of CIGNA Europe Insurance Company SA-NV (CIGNA) who underwrote the policy. It is my understanding that CIGNA has accepted responsibility for sales like this one, and by extension, complaints about those sales. So if TMG did anything wrong in this sale, CIGNA would ultimately be responsible for putting that right.

background

Mr G is represented in his complaint by a claims management company, Charterhouse Claims. They say the PPI was mis-sold for several reasons, including that Mr G thought he had no choice other than to take out the PPI if he wanted to get the loan, and he was given inadequate information about the policy. They also say that because the policy was funded by a single premium, for a fixed term, and had restrictive cancellation terms, the seller was under a duty of care to make sure that Mr G understood how the policy worked so he could make an informed decision about whether or not he needed the cover. Finally, they submit that the true cost of the PPI and interest that was added to the loan is wholly disproportionate to the initial loan amount.

CIGNA hasn't yet provided any submissions to defend this complaint. Rather it has tried to pass the complaint on to TMG. However, I'm of the view it's appropriate to consider this complaint against CIGNA for the reasons that follow. First, the sale took place in 2004, before the statutory regulation of insurance mediation activities in January 2005, so TMG didn't have to be, and wasn't a member of our compulsory jurisdiction at that time. TMG was a member of one of our former schemes, the Mortgage Code Arbitration Scheme (MCAS), and some of Mr G's complaint points could have been considered by that scheme. However, as TMG is now in liquidation, and as CIGNA is vicariously responsible for the acts and omissions of TMG (as its agent) I consider it's appropriate for CIGNA to answer this complaint. CIGNA is a member of our voluntary jurisdiction, which covers insurance intermediation activities, including where an activity is delegated to an agent. So we can consider this complaint against CIGNA on the basis that TMG sold the policy to Mr and Mrs R on its behalf.

There is very little evidence available from the point of sale, because CIGNA didn't carry out the sale. I've therefore provisionally decided this complaint on the basis of the limited information available to me. However, I would invite CIGNA and Mr G to provide me with any additional information or evidence they would like to be considered, in response to this provisional decision.

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. I've also taken account of the law at the time the PPI was sold. I'm currently of the view this complaint should be upheld for the following reasons:

I consider this sale was likely an advised sale. I note that Mr G selected, 'no', in response to our question asking whether the sale was advised, in the questionnaire he completed for this service. However, he also selected monthly premium, when in fact the policy was a single premium policy. So, understandably, his recollections from the time of sale are likely to have faded over time. I have therefore considered the other evidence available to decide whether or not the sale was an advised sale. The PPI was discussed during the same meeting in which advice was being given on the mortgage. Also, the meeting took place in Mr G's home. Taking these factors into account, I think it more likely than not that the sale was an advised sale.

TMG acting for and on behalf of CIGNA, owed Mr G a duty of care. So it needed to act fairly and reasonably towards him, to ensure that any advice it gave him was accurate and appropriate to his circumstances. Mr G was taking out a mortgage to consolidate his debts at the time he took out the PPI. And he was sold a policy that covered him for only five years of a 25 year loan. The policy sold, cost approximately £2769 and Mr G also had an obligation to pay interest on the premium for the 25 year term of the loan (in the event that it ran for its full term), significantly increasing the cost of the premium to him. In my view, it isn't fair and reasonable to advise a person, in Mr G's circumstances, to take out a policy that only covers five years of a 25 year loan, particularly when the insurance cost £2769 plus interest over the 25 year term of the loan. The insurer was taking on a relatively small risk, and Mr G was retaining a large risk as he would be un-insured for the majority of the term of his mortgage.

As Mr G was taking out a mortgage to consolidate debt, it's reasonable to expect that he may have wished to pay off the loan early, and re-finance again. So, I think he likely needed a product that was also flexible and could be cancelled without causing him significant loss.

However, the PPI sold to him by TMG seems to have provided Mr G with no right to a proportionate, or in fact, any premium refund. Although limited documentation has been provided on this particular complaint, CIGNA have told us that all the TMG policies underwritten by CIGNA would be the same type. So the terms and conditions we have previously received from CIGNA, will also be relevant to this complaint. In referring to those terms and conditions I note that after the first 30 days, cancellation of the policy any refund of the premium would be at CIGNA's discretion. Also, the cancellation would not be pro-rata because 20% of the premium would be deducted from what otherwise would have been a proportionate refund. The PPI policy was paid for by a large single premium that was added to the loan. At that time, it was possible to buy more flexible and better value policies, such as monthly premium policies, which could be cancelled at any time.

I currently consider that the TMG adviser didn't act in Mr G's best interests in recommending this product. I say this because he recommended a product that didn't provide for Mr G's need for flexibility, or take account of the circumstances in which he was taking out the loan. I also note it only provided cover for a very short part of his mortgage term. Mr G was entitled to rely on the advice given to him by the TMG adviser. However, in relying on that advice, I consider it was reasonably foreseeable to TMG that he was likely to suffer financial loss, either from being left uninsured despite having to continue paying for the PPI, or from being unable to have the premium refunded, if he needed to refinance during the period of the PPI (which I think was likely).

So, I'm currently of the view that this was an unsuitable recommendation for someone in Mr G's circumstances. I don't think he would have entered into the contract if TMG had provided him with clear information that wasn't misleading.

I'm currently minded to uphold this complaint and award compensation to Mr G as set out below.

fair compensation

I understand that Mr G repaid his loan in 2009. However, 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 G needs to get back the extra he's paid.

So, CIGNA should:

- Work out and pay Mr G the difference between what he paid each month on the loan and what he would've paid without PPI.

- Work out and pay Mr G the difference between what it cost to pay off the loan and what it would have cost to pay off the loan without PPI.

- Add simple interest to the extra amount Mr G paid from when he paid it until he gets it back. The rate of interest is 15% a year until April 1993 and 8% a year from then on†.

– I understand that Mr G made a successful claim in 2004 (and was paid approximately £2,399.94). CIGNA can take off what Mr G got for the claim, from the amount it owes him.

† HM Revenue & Customs requires CIGNA to take off tax from this interest. CIGNA must give Mr G a certificate showing how much tax it’s taken off if he asks for one.

my provisional decision

My provisional decision is that I propose to uphold this complaint and require CIGNA Europe Insurance Company SA-NV to pay Mr G fair compensation in accordance with the calculation I have set out above.

Carolyn Harwood
ombudsman