

complaint

This complaint concerns a monthly mortgage payment protection insurance (“MPPI”) policy sold to Mr and Mrs N in September 1996. Mr and Mrs N approached Nationwide Building Society (“Nationwide”) for a mortgage and MPPI was added. In June 2002 Mr and Mrs N applied for a further advance and they were once again sold MPPI. Mr and Mrs N complain on the basis that they were mis-sold the MPPI.

background

Nationwide ultimately decided to not uphold Mr and Mrs N’s complaint. Upon bringing their complaint to this service our adjudicator also decided to not uphold Mr and Mrs N’s concerns. Mr and Mrs N have now asked for an ombudsman to make a final decision.

my findings

I have only provided a brief summary of the complaint above but I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. In doing so I have also taken into account the law and good industry practice at the time the policy was sold.

The key questions I will consider in this case are as follows:

- Whether Nationwide gave Mr and Mrs N information that was clear, fair and not misleading in order to put them in a position where they could make an informed choice about the insurance they were buying.
- If Nationwide was giving advice or making a recommendation, whether it took adequate steps to ensure the product being recommended was suitable for Mr and Mrs N’s needs.

If there were shortcomings in the way in which Mr and Mrs N were sold the policy, I will also consider whether they are worse off as a result; that is, would they have done something differently – such as not taken out the policy – if there had been no shortcomings.

I have decided to not uphold this complaint. I shall explain why.

Nationwide has not provided me with point of sale documentation from the 1996 sale. Nationwide says it simply does not have this documentation as the mortgage was redeemed some time ago. Nationwide says it only keeps such records for six years post redemption.

Secondly, Nationwide did cause confusion to Mr and Mrs N when clarifying certain aspects about the optional nature of the MPPI in the 1996 sale. I shall clarify this point in my substantive findings below. Finally, I have also not been supplied with details of Mr N’s workplace entitlements in terms of insurance products his employer provided at the time.

I am left therefore with each party’s word about how the sale was conducted and their testimony about the sale. This does of course create difficulties considering the passage of time and having now to consider such matters retrospectively.

I turn now to the 1996 sale.

basis of sale?

Nationwide has told me that this sale was non-advised and that it would have occurred in branch. Mr N has told me that the sale took place via the telephone and has also made reference to "meetings" in his subsequent correspondence. I have no documentation or records from this sale and two competing views as to the sales channel. However, I am satisfied this sale was conducted on a non-advised basis. I say this because Nationwide says this was a non-advised sale and from my knowledge and experience of Nationwide's sales practices I am satisfied this is likely to be accurate. As a non-advised sale it was for Nationwide to provide clear and fair information about the MPPI to Mr and Mrs N. It was for Mr and Mrs N to decide whether the MPPI met their needs at the time based upon the information they received from Nationwide.

did Mr and Mrs N have a clear choice about the MPPI they were selecting?

Mr and Mrs N have maintained that they were told the MPPI was mandatory if they wished to secure the mortgage they were applying for. I can see that Nationwide issued a second Final Response Letter after Mr N insisted that he was led to believe the MPPI was compulsory when applying in 1996. Nationwide concede that this was a possibility on the basis that it was their practice in the 1990's to insist the MPPI was made a condition of the mortgage if the loan to value ratio on the property was over 95%.

A third Final Response Letter was sent by Nationwide and by this stage Nationwide abandoned its position that the MPPI was compulsory. By now Nationwide insisted that by 1996 the requirement to have mandatory MPPI was not in place. Nationwide ultimately concluded that the MPPI would have been optional and that it would have been for Mr and Mrs N to choose to have the MPPI on their account.

This is quite unfortunate and even though Mr and Mrs N have maintained consistently that it was compulsory, I am not persuaded, as I must be, that it was presented as a mandatory requirement. This is primarily due to the passage of time and the lack of documentary evidence available. I find it just as likely that the policy was presented as being optional and I shall explain why. The policy appears to have been tailored in that Mr and Mrs N have selected a monthly benefit of £450 for a benefit claim period of two years whereas a one year option also existed; the MPPI was taken out for accident, sickness and unemployment whereas other options such as unemployment only also existed and they chose to protect Mr N solely. Whilst not conclusive, the fact that the policy is tailored and only covers Mr N leads me to think it is more likely that they were aware cover was optional and they could select different levels of cover.

did Nationwide provide Mr and Mrs N with clear and fair information about the MPPI?

Given the passage of time I cannot say if Mr and Mrs N were aware of the policy costs and benefits and whether or not Nationwide highlighted any significant features of the MPPI to Mr and Mrs N. I have no documentation to say this was the case and although Nationwide have told me they would have received a policy summary and leaflet, I am not able to say they did. As such there is a very real risk of information failings in this sale. However, before I can uphold a complaint I need to be able to say that such information failings would have caused a consumer detriment; this is to say that the unclear or missing information has put

the consumer at a disadvantage in any way. In Mr and Mrs N's case I cannot safely say they have suffered any detriment and would have done anything different if the information had been provided to them in a clear and fair way. I shall explain why.

From what I have been told of Mr N's circumstances and taking into account the policy terms he was eligible for the policy. He would also expect to benefit in full from the MPPI as he was employed at the point of sale in a full-time role and was in good health. He would not therefore be caught by the main exclusions and limitations, such as those relating to pre-existing medical conditions or those who were self-employed, for example. Mr N could expect to benefit in full from the policy and any further information here about such terms would not have been of relevance to him.

The MPPI cost £29.76 and provided Mr N with cover for accident, sickness and unemployment for a monthly benefit of £450 and a benefit period of 24 months. Mr N's mortgage repayment at the point of sale was £581.49 for the first month and £538.27 thereafter. As a non-advised sale it was for Mr and Mrs N to select a monthly benefit level that they saw fit. The fact the monthly benefit is set below that of Mr N's mortgage repayment was a matter for Mr and Mrs N and not Nationwide. As a non-advised sale Mr and Mrs N had to decide whether the policy was suitable for their situation. Nationwide was not making a recommendation to them to purchase the MPPI at this monthly benefit level.

Mr N has told me that he was entitled to good workplace benefits such as 12 months' and more sick pay and that he had an insurance provision through his employer at the time which would also assist if he was unable to work. Mr N has now left his previous workplace and he is unable to provide evidence of this. Nevertheless, I am satisfied that it was for Mr and Mrs N to select a level of cover knowing what their own situation and circumstances were at the time. The MPPI would also have paid irrespective of Mr N's workplace entitlements for a claim for accident, sickness and unemployment. This would allow Mr N to use such entitlements elsewhere and would provide him with welcome breathing space during a difficult time. Mr N told our adjudicators he was earning almost three times the earnings of his partner and Mr and Mrs N may well have struggled to meet their mortgage commitment at the time if Mr N was unable to work. I have not seen any evidence either that the policy was prohibitively expensive for Mr N so I cannot safely say that any further information about the cost would have dissuaded them from purchasing the MPPI.

Overall, I am not persuaded that in Mr N's circumstances, any further information about the policy benefits would have dissuaded him from purchasing this policy. Any further information would have simply revealed that he was eligible and not caught by any restrictions or limitations which would affect his ability to claim, that the benefits and costs were at a level Mr N chose to take at the time knowing what his own position was, and that the MPPI was something he would have been interested in given the financial commitment they were making at the time knowing that Mr N would have been the main wage-earner. I cannot safely say therefore that they would have done anything different if they had been provided with clearer information.

I do not uphold this part of their complaint.

I turn now to the further advance application made in June 2002.

basis of sale?

I have been provided with the further advance application form from this sale. I am satisfied this was conducted on a non-advised basis. The application form makes it clear that it was completed in Mr and Mrs N's own time and suggests that it should be returned to the branch once completed. There remains the possibility this may have been completed in branch, with advice, but I am not persuaded this is more likely than not. It is clear that this sale was supposed to be carried out as part of a non-advised process. In the absence of any further evidence such as a suitability assessment or recommendation having been made I am satisfied on a balance of probabilities that this sale was non-advised and I acknowledge here that Mr and Mrs N have not actually said they were advised in this sale.

did Mr and Mrs N have a clear choice about their MPPI selection?

Mr and Mrs N have told me that they selected the MPPI on their further advance as they thought it was compulsory. I have been provided with the application form and nowhere upon this form is it stated that the MPPI is mandatory. The form asks the question "Do you wish to cover your further advance payments with MPPI?" a tick has been placed in the "Yes" box. Alongside this option is an equally prominent "No" option. Mr N has told me that as he believed his first MPPI policy was compulsory he selected the MPPI in this instance believing the same to be true. The subsequent advance offer also does not make reference to the MPPI being a mandatory product. On this basis I cannot safely say that the MPPI was sold as being compulsory. I cannot say now what was discussed with Mr and Mrs N about the MPPI in this sale, however the documentation does suggest that the MPPI was sold as optional. I cannot safely say that Nationwide sold this policy as not optional.

did Nationwide provide Mr and Mrs N with clear and fair information about the MPPI?

I can see that Mr and Mrs N were borrowing a further £18,500 for home improvements and that they now had one dependent child. At this stage Mrs N was a housewife. The further advance application form makes reference to an MPPI leaflet again being provided but for the same reasons as the 1996 sale I cannot say now that they ever did receive this leaflet and read it. As such there is a real risk of information failings in this sale. Despite such failings however I do not find in this sale that Mr and Mrs N would have done anything differently.

I say this because Mr N was still with his same employer as the 1996 sale and was committing himself to significant additional borrowing. The MPPI was increased to a £600 monthly benefit and the cost of the MPPI was then increased by a further £8.98. The same benefit period of two years applied as did the cover selected of accident, sickness and unemployment for Mr N solely. Again Mr N was eligible for the MPPI and he would not have been caught by any significant restrictions or limitations.

Given that I have seen no evidence that the cost was in any way unaffordable I do not see how further information about the policy's costs and benefits would have dissuaded Mr N. He was borrowing a large sum of money and was by now the sole wage-earner in the household. Furthermore, Mr and Mrs N also had one dependent child by this time. Despite his workplace benefits the MPPI would still pay the monthly benefit selected of £600 per month in the case of a valid claim. I cannot say that such benefits would have been of no use to him. I cannot safely say knowing now what Mr and Mrs N's circumstances were at the

time of sale that they would have done anything different had they been provided clearer information about the policy's costs and benefits. In saying this I have considered that this was a non-advised sale and that it remained for Mr and Mrs N to assess their circumstances and to decide what best suited their interests; not Nationwide.

So, on this basis I cannot say that the risk of information failings, if such failings did exist, would have caused Mr and Mrs N any detriment in this sale either. In light of Mr and Mrs N's circumstances it appears to me just as likely that they would not have done anything differently had the information been provided in a clearer fashion.

I do not uphold this part of their complaint.

I know that this decision may not be the outcome Mr and Mrs N would have wanted, however I hope my reasons go some way towards addressing their concerns with the sales of the MPPI in their case.

my final decision

I do not uphold this complaint and I make no award against Nationwide Building Society.

Daniel Lucas
ombudsman