

complaint

Mr and Mrs H complain that London and Country Mortgages Ltd ("London and Country") mis-sold them a payment protection insurance ("PPI") policy.

background

Our adjudicator upheld the complaint. London and Country didn't agree, and so the case has been passed to me for a final decision to be made.

I would like to apologise to all parties for the length of time it has taken for the case to reach this stage.

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 explained our approach to complaints about payment protection insurance on our website, and I've used this approach in this case.

I'm going to uphold this complaint. I'll explain why.

I have been provided with a large amount of evidence by both sides, all of which I have considered with care. This includes telephone calls made and letters sent at the time of the sale, which has helped me to understand how this PPI was sold.

From that evidence, I can see that Mr and Mrs H initially decided not to take out PPI, before changing their mind. After receiving a letter, Mrs H rang London and Country's representative, and he sent out a quotation and a copy of the terms and conditions. Mrs H rang back on the day of completion to confirm the policy was set up. So it's clear that Mr and Mrs H wanted PPI and decided to take it out.

However, that is not the only thing I need to look at. In this case, Mr H, who was the person covered by the policy, had an unusual employment position. He was contracted to work for a company, but he did so through what is known as a "composite arrangement". This meant Mr H was likely to be paid a small wage by a limited company set up on his behalf, and would've received the rest of his salary through dividends. This kind of arrangement is no longer used regularly, but at the time was a common arrangement for high-earning contractors as it meant Mr H would've paid much less tax than if he was employed directly.

The way these schemes worked meant that Mr H was unlikely to pay tax on the small amount of earnings he would've received as an employee. Unfortunately, this meant that under the policy definitions, he was not classed as employed. The policy required "your employer" to deduct PAYE tax and National Insurance in order to meet the definition of employment.

Mr H's arrangement would have been set up precisely to avoid him paying PAYE tax. So I think it's very likely that if he'd tried to claim for unemployment, the insurer, on receiving evidence of his employment, would've denied the claim.

London and Country has argued that Mr H didn't let them know about his employment position, and so it couldn't have known that the policy was unsuitable for him. Although this

at first seems an attractive argument, I have to look at what London and Country had to do when selling PPI. Because it didn't advise Mr and Mrs H to take out the policy, it *didn't* have to make sure the policy was suitable for them. But it *did* have to provide them with enough information so they could decide whether to take the policy out.

I know that London and Country's representative sent out a quotation form to Mr and Mrs H, along with a policy document. Neither the policy document, nor the summary which I have also seen, make it clear enough that Mr H wouldn't be covered. To realise that he wasn't would require the fifteen page document to be read in some detail, and this exclusion was only noticeable by careful reading of the definitions, not the section detailing the main things the policy didn't cover. And it doesn't appear there was any contact between Mr and Mrs H and London and Country to explain the PPI further. So I don't think London and Country made this term, which was important in Mr and Mrs H's circumstances, clear enough.

London and Country also argue Mr H filled in the quotation form and described his employment status as "full-time". It argues this mis-led it into setting up the cover. I don't think Mr and Mrs H deliberately mis-led it. Mr H did work full-time at one place of work. And whilst it makes no difference to my decision, London and Country also dealt with a mortgage application for Mr and Mrs H, so I would be surprised if it hadn't received proof of income for Mr H, which should have made his employment arrangement clear.

I have to ask myself whether Mr and Mrs H would've taken out the cover if they'd known that Mr H would find it difficult to claim. I think it is very unlikely they would have done. Mrs H said in the phone call that the cover would be "handy to have" but went on to explain that it wasn't worth protecting her income, which was much smaller than Mr H's. So if they'd understood Mr H wasn't covered, I don't think they'd have bought the policy at all.

So I order London and Country to put Mr and Mrs H back in the position they'd have been in if they hadn't bought the PPI.

what the business needs to do to put things right

London and Country should put Mr and Mrs H back in the position they would've been in if they hadn't taken out PPI. So London and Country should:

- Pay Mr and Mrs H the amount they paid each month for the PPI.
- Add simple interest to each payment from when they paid it until they get it back. The rate of interest is 15% a year until April 1993 and 8% a year from then on†.
- If Mr and Mrs H made a successful claim under the PPI policy, London and Country can take off what they got for the claim from the amount it owes them.

† HM Revenue & Customs requires London and Country to take off tax from this interest. London and Country must give Mr and Mrs H a certificate showing how much tax it's taken off if they ask for one

my final decision

I uphold this complaint and order London and Country Mortgages Limited to compensate Mr and Mrs H as described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 22 July 2016.

Nigel Hamilton
ombudsman