

### **summary and background to complaint**

Mr and Mrs C complain that Bank of Scotland plc mis-sold them a Payment Protection Insurance ("PPI") policy in connection with a loan in 2001.

I have attached my provisional decision, dated 12 April 2013, which forms part of this final decision. In my provisional decision I set out why I was minded to uphold the complaint. I asked both parties to let me have their final submissions by 14 May 2013.

### **my findings**

In this case, neither party has provided any further evidence or argument for my consideration.

I therefore see no reason to depart from the conclusions set out in my provisional decision of 12 April 2013.

### **my decision**

For the reasons set out in my provisional decision, I have decided that the complaint should be upheld.

Bank of Scotland plc should recompense Mr and Mrs C as set out in my provisional decision.

Roxy Boyce  
**ombudsman**

COPY

**PROVISIONAL DECISION**

**complaint**

Mr and Mrs C complain that Bank of Scotland (trading as Halifax) mis-sold them a Payment Protection Insurance ("PPI") policy in connection with a loan in 2001.

**background**

Mr and Mrs C have provided a detailed testimony about the sale of this policy. They report that they were seeking a loan in 2001 to set up a business for Mrs C. As they had their mortgage with Halifax, Mr and Mrs C approached them - alongside other high street lenders – seeking a business loan. They report that they were advised in a meeting with the representative that they could take out a secured, personal loan against their property, and that this would be a cheaper option for them. Alongside the loan, Mr and Mrs C were sold a PPI policy at a cost of £12.01 per month. They report that they were told they would both be covered by the policy.

In 2001 Mr C had a period of ill health and made a claim against the policy.

In 2008 Mrs C became unwell and attempted to claim on the policy. At that point she discovered that she was not covered by the policy, and that Mr C was the only named person on it.

Mr and Mrs C are complaining that they were mis-sold the policy as they were told at the point of sale that they were both covered by it.

**my provisional findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Our general approach to considering complaints about the mis-sale of PPI is well-documented and is set out in our online PPI Technical Resource at:

[www.financial-ombudsman.org.uk/publications/technical\\_notes/ppi.html](http://www.financial-ombudsman.org.uk/publications/technical_notes/ppi.html)

In deciding what is fair and reasonable in the individual circumstances of this case, I have considered the issues in accordance with this general approach. This includes taking into account the law and good industry practice at the time the policy was sold.

The key issues I need to consider in this complaint are:

- whether Halifax gave Mr and Mrs C information that was clear, fair, not misleading and sufficient to put them in a position to make an informed choice about whether to purchase the PPI Policy; and
- whether in giving any advice or recommendation, Halifax took adequate steps to ensure that the PPI policy was suitable for Mr and Mrs C's needs.

If there were shortcomings in the way in which Halifax sold the policy, I then need to consider whether Mr and Mrs C are worse off as a result. That is, would they be in a different position now if there had not been any shortcomings?

Because the sale took place in a meeting, there is no record of what was said, so I must base my decision upon the evidence and testimony provided to me, and what I consider is most likely to have happened in the circumstances.

Mr and Mrs C have provided a very detailed and comprehensive report on their recollection of the meeting, the circumstances of the sale and their views on and reasons for taking the policy that was offered to them. Mrs C has said:

*“The young lady asked me what the loan was for. I told her it was for a business I wanted to buy at XXX..... I told her the business was my venture, and that my husband would have no part in the business, I was a sole trader. He was happy to sign the agreement for me to use our house as security.*

*I had done a business plan with Lloyds TSB and was confident that the turnover would be healthy enough for me to pay back the monthly repayments. At this point, the young lady recommended we put the loan down as a home improvement loan. She said it would be cheaper for me. She then went to speak with the manager, when she came back she said “I’m happy to tell you we can offer you the full amount of £16,000.” She then talked to us about the insurance.”*

While I do not regularly decide cases solely on the basis of the testimony of either party, specific evidence from a witness about what *actually* happened in a given situation has greater probity value than general evidence about what might have, or should have, happened. In this particular case, I am minded to uphold Mr and Mrs C’s complaint because I am not persuaded that the fact that the policy was only to cover Mr C was made clear to Mr and Mrs C at the point of sale.

Mrs C has reported:

*“She then talked to us about the insurance. She said you would be able to make a claim after you have been off work thirty days. At this time my husband had never had a day off work ever and he told her so and then I actually said Well, I can not imagine me being off work myself. The young woman replied Well you never know what may happen in the future. Its peace of mind for you both to know you are insured.”*

I appreciate that Mrs C’s recollections of the meeting may not be exact. However, I note that it was *her* business venture, and that *she* was applying for the loan. Although Mr C was added to the loan and the loan was secured, I consider it reasonable that Mrs C would have thought that she was covered, given her expressed purpose for taking the loan. As Mr C had no involvement with the business, there would have been less need for him to have that cover. I am therefore not persuaded that the adviser took Mr and Mrs C’s situation fully into account in recommending the policy, which only covered Mr C.

Further, I am satisfied that in the sale of PPI the obligation is on the business to make the buyer aware of who is covered by the policy they are purchasing. While I appreciate that the representative may have made this clear in the discussion, I am not persuaded, given Mrs C’s testimony, that the evidence before me is sufficient to reassure me that that is what happened. I shall therefore consider whether the documentation provided to Mr and Mrs C might have rectified any misunderstanding that had occurred.

Having reviewed the Loan Agreement, there is no information to suggest that only Mr C was covered by the PPI. From the document it would appear that the loan was made equally to Mr and Mrs C – both their names and details were clearly presented on the form, with no indication that one or other borrower took priority in that regard. I consider it reasonable for Mr and Mrs C to have assumed that the same applied to the PPI policy which was also offered on the form. There was no suggestion that the “you” referred to in the phrase:

*“Do you want Personal Loan Repayments Insurance?”*

was only for the first named customer.

Turning to the policy documentation, Halifax has assured this service that a copy of the policy would have been given to Mr and Mrs C at the point of sale. While I am mindful of Mr and Mrs C’s testimony

that they did not receive a policy document at any point during the meeting, I cannot know what actually happened. Having considered the document, I note that the information that only the first named person on the loan agreement would be covered was at the bottom of the fourth page of the document, the last in a list of 20 definitions. While the issue is also noted under “*Eligibility*” in section two of the policy document, it is the final point in a long sentence, where the main focus appears to be that the customer has “*entered into a loan agreement with Halifax*”. On balance, I consider it unlikely that the document would have sufficiently highlighted to Mr and Mrs C that it was only Mr C who was covered by the policy. I do not, therefore, consider it would have mitigated any failing by the Halifax adviser to make the cover clear, even if I were persuaded that Mr and Mrs C were given the policy in the meeting.

Halifax has suggested that as Mr and Mrs C had a ‘cooling off’ period before signing acceptance of the loan and policy, they had ample time to consider the policy and the cover it offered them and that they must have found it acceptable as they agreed to purchase it. I appreciate this view, but if Mr and Mrs C had left the meeting with an understanding that the policy covered both of them and met their needs, I can see why they may not have given much time to re-visiting the policy documentation afterwards. Good industry practice has long indicated that key issues should be brought to the attention of the customer before the sale is concluded, not just in paperwork after the event, for this very reason.

I am further persuaded that Mr and Mrs C left the meeting with the view that they were both covered by the policy because Mrs C attempted to claim upon it in 2008.

Her claim for mis-sale is not based upon the view that she had no need of the policy, but that she was mis-led about the cover that it offered them.

In summary, I am not persuaded that Halifax treated Mr and Mrs C fairly in the way this policy was sold to them. I am currently persuaded that if Halifax had properly informed Mr and Mrs C at the time of the sale, they would have taken alternative insurance to cover the loan.

### **my provisional decision**

I currently intend to uphold Mr and Mrs C’s complaint and to award the following redress:

- Bank of Scotland (trading as Halifax) should, with her agreement, add Mrs C to the policy, adjusting premiums if necessary to reflect Mrs C also being covered. These back premiums can be deducted from the redress set out below if necessary. But Mr and Mrs C should be aware that premiums for the insurance may increase going forward should they accept this outcome.
- Bank of Scotland (trading as Halifax) should negotiate with its insurer to cover Mrs C’s claims from the date of her attempted claim in 2008 for the duration of the cover she would have enjoyed under the policy. Interest on each benefit payment should be paid at 8% simple.
- If the insurer is either unable or unwilling to adjust the policy to cover Mrs C’s claim, then Bank of Scotland (trading as Halifax) should stand in its stead and provide to Mrs C the financial cover she would have received for the claim.

I now invite both parties to let me have in writing any further submissions they may wish to make in writing, by 14 May 2013, after which time I shall issue my Final Decision.

Roxy Boyce  
**ombudsman**