

complaint

This complaint is about a mortgage payment protection insurance (PPI) policy taken out in 2005. Mr and Mrs P say Santander UK Plc mis-sold them PPI. Although it was a joint mortgage, the PPI was set up just to cover Mr P.

background

The background and circumstances leading up to this complaint, which includes Mr and Mrs P's circumstances at the time of the sale as well as the PPI policy benefits, limitations and exclusions of cover, aren't disputed. So I haven't repeated all of this information here.

Our adjudicator did not uphold the mis-sale complaint.

Mr and Mrs P's representative disagreed with the adjudicator's opinion – they didn't raise any new or additional points but repeated the same complaint points and arguments they'd previously made.

As the complaint couldn't be resolved informally, it has been passed to me for a final decision.

my findings

Although I have only included a summary of the complaint, I have read and considered all the evidence and arguments available to me from the outset, in order to decide what is, in my opinion, fair and reasonable in all the circumstances of this complaint.

When considering what is fair and reasonable, I am required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

We've set out our general approach to PPI mis-sale complaints on our website and published some example final decisions that set out in detail how these relevant considerations may apply to PPI sales like Mr and Mrs P's. I haven't set out that detailed information here but I've taken into account all relevant considerations in deciding Mr and Mrs P's complaint.

Having done so, I've decided not to uphold the mis-sale complaint. I've also considered the issue of non-disclosure of commission. And I've decided Santander didn't need to tell Mr and Mrs P about the commission it received - so Santander doesn't need to pay back *any* of the commission Mr and Mrs P paid for the PPI.

In summary, my reasons for not upholding the mis-sale part of this complaint are:

- I think Santander made it clear that Mr and Mrs P didn't have to take out the PPI and they chose to take it out. I say this because, although Santander no longer has a copy of Mr and Mrs P's PPI application form, it has provided a sample of the sort of form that was in use at the time. That gave three options – to take out the policy, to think about it or to decline the policy. Santander has been able to provide a copy of the 'high level needs analysis' undertaken with Mr and Mrs P, which shows that Mr P elected to take out the PPI.

- Santander recommended the PPI to Mr and Mrs P, so it had to check that the PPI was right for them. And the evidence about Mr and Mrs P's circumstances at the time, shows that the policy wasn't fundamentally wrong or unsuitable for Mr P. For example Mr P was eligible for the cover and although the couple had some existing means, they still seem to have had a need for cover.

There was nothing about Mr P's employment or occupation which would have made it difficult for him to claim. And he hasn't told us about any pre-existing medical conditions that could affect his ability to claim. There were also no additional restrictions on cover for mental health and/or back problems.

- It's possible the information Santander gave Mr and Mrs P about the PPI wasn't as clear as it should've been. But I've found that they chose to take it out - so it looks like they wanted this type of cover. The cover wasn't fundamentally wrong for Mr P as I concluded above, or too dissimilar to what Mr and Mrs P reasonably thought they were buying from the information they were given. It also looks like it was affordable – so it seems like it would have been useful for them if something went wrong. Because of this I don't think Mr and Mrs P would have declined the cover had Santander done anything more.

Overall, I consider that Mr and Mrs P would have still taken out PPI. I think the policy could provide a useful benefit in a difficult time, given their circumstances at the time. I also think the policy was sufficiently close to what it's likely they thought they were getting. And in those circumstances, I think that they would have taken out the policy in any event.

Mr and Mrs P's representative has raised a number of what I consider to be general complaint points, which it says apply to all PPI complaints. These general points include: a claim that the Financial Ombudsman Service is not correctly applying the regulator's rules and guidance for handling PPI complaints; these policies represented poor value because of the number of significant exclusions and limitations of cover coupled with the low claims ratio; and the duty of utmost good faith meant Santander should have disclosed the poor value and explained the significance of the limitations and exclusions and the impact it had on the chances of making a claim.

But Mr and Mrs P's representative has not said how these points apply to the specific facts and circumstances of Mr and Mrs P's individual complaint – just that they apply to all PPI complaints.

I have thought about these things and how they might apply in Mr and Mrs P's particular case. But these points don't persuade me to alter my conclusions about what is fair and reasonable in all the circumstances of the complaint – for the reasons I've set out above I don't uphold the mis-sale element of this complaint.

non-disclosure of commission

As I said above, I've also considered the issue of non-disclosure of commission, including whether the non-disclosure resulted in an unfair relationship under section 140A of the Consumer Credit Act – and if so, what fair compensation would be to remedy that unfairness.

Having done so I've decided Santander didn't need to disclose the commission it received, so Santander doesn't need to pay back any of the commission Mr and Mrs P paid. My reasons are set out below.

was there an unfair relationship?

Mr and Mrs P's representative has made a number of representations about this part of the complaint including the impact of the *Plevin*¹ judgment and sections 140A and 140B of the Consumer Credit Act on their complaint.

In summary they have said Mr and Mrs P should get back all the money they paid for the policy because: Santander failed to tell Mr and Mrs P about the high commission and profit-share rates paid, the low claims ratio and the restrictions and exclusions on cover. Because they say that meant the policy was poor value, I should find that Mr and Mrs P wouldn't have taken out the policy had they known about the level of commission and they should receive a refund of all the premiums they paid.

But in this case, Santander has told us that the commission for Mr and Mrs P's PPI was *less* than half of what they paid for each premium. We've looked at how Santander has worked this out and based on what we've seen, I'm satisfied that the commission in Mr and Mrs P's case was less than half the cost of the PPI.

As that's the case, taking into account:

- the effect of section 140A and B of the Consumer Credit Act;
- The Supreme Court judgment in *Plevin* and the conclusion in that case; and
- The FCA's rules and guidance for handling complaints about the non-disclosure of commission and profit share - introduced in light of the Supreme Court judgment in *Plevin* - which requires a business to presume that the failure to disclose commission gave rise to an unfair relationship where the business expected commission and profit share to be more than 50% of the cost of the policy

I don't think Santander needed to tell Mr and Mrs P about the commission. So it follows that I don't think the non-disclosure created an unfair relationship - I don't think Santander treated Mr and Mrs P unfairly.

This means Santander doesn't need to pay Mr and Mrs P back *any* of the commission they paid for the PPI.

my decision

Overall, having considered all the evidence and arguments to decide what is, in my opinion, fair and reasonable in all the circumstances of this complaint and for the reasons I have set out above, I do not uphold the mis-sale element of Mr and Mrs P's complaint or make any award in favour of them for this part of the complaint.

And because I've decided that Santander UK Plc didn't need to disclose the commission it received, it doesn't need to pay back any of the commission Mr and Mrs P paid for the PPI.

¹ *Plevin v Paragon Personal Finance Limited* [2014] UKSC 61 in which the Supreme Court concluded that the non-disclosure of commission could lead to an unfair relationship

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs P to accept or reject my decision before 8 October 2021.

Carole Clark
Ombudsman