

summary of complaint

This complaint concerns a monthly premium payment protection insurance (“PPI”) policy, taken out in connection with a mortgage during a meeting at a building society branch in March 1999. The policy protected Miss C’s mortgage repayments against accident, sickness or unemployment.

Miss C has complained that Aviva Insurance Limited mis-sold the policy because the evidence from the time suggests the building society in question was acting as an agent of Aviva for the sale of this insurance, and Aviva has accepted the complaint on that basis. Miss C is being represented in her complaint by a claims management company.

my findings

I have considered all of the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances. I have also taken into account the law and good industry practice at the time the policy was sold. The relevant considerations seem to be materially the same as those set out in the Financial Ombudsman Service’s general approach to PPI mis-sale complaints, which is explained on our website. So the overarching questions I need to consider are:

- whether, in giving any advice or recommendation, Aviva took adequate steps to ensure that the product it recommended was suitable for Miss C’s needs; and
- whether it gave Miss C information that was clear, fair and not misleading in order to put her in a position where she could make an informed choice about the insurance she was buying.

In the event I am persuaded to find in Miss C’s favour on either of the above, I shall also need to consider whether she acted to her detriment as a consequence of any shortcoming on Aviva’s part.

In this case, Miss C suggests that the policy was recommended to her by the same financial adviser who sold her an endowment to support her mortgage. Whereas the paperwork the building society provided to Aviva indicates that Miss C’s financial adviser was only acting as an ‘introducer’ to the building society (which in turn was an agent of Aviva). I notice that the application form Miss C signed in the building society branch for the mortgage, on which the PPI policy was selected, said that the building society itself would ‘strongly recommend’ she apply for the cover.

It remains in doubt whether the building society employee would have been in a position to give Miss C a personalised recommendation for the insurance cover – he or she might not have known as much about Miss C’s wider personal circumstances as perhaps her financial adviser would. But whether or not advice was given in the fullest sense of the word would not make a difference to the outcome of this complaint.

I say this because the policy appears to have been suitable for Miss C. She has mentioned she was entitled to six months’ full sick pay, and a redundancy package, which would have provided her with a modest amount of breathing space (taking into account that she only had about 4½ years’ service). But the benefits payable under this policy were not affected by any employee entitlements and would meet the mortgage plus other costs (such as buildings insurance or the endowment premium) for up to 12 months in any one claim.

The only other assets Miss C has mentioned (other than her endowment, which was needed to repay the mortgage at the end of its term) were held in a 'Sharesave' scheme. She has not provided an indication of the size of that arrangement, but in any case it is plausible that she might have preferred not to relinquish its long-term benefits even if she was out of work for more than a few months. So in my view it would not have been inappropriate for an adviser to recommend a PPI policy to better ensure she could repay her mortgage.

But Miss C did, of course, still have a choice. And more than that, the building society representative (acting as an agent of Aviva) needed to put her in the position where she could make an *informed* choice. So I shall now consider that issue.

Firstly, I am satisfied it is more likely than not that Miss C would have understood the policy was optional. Although some generalised comment has been made by her representative about the assumed nature of some PPI sales, she has herself suggested that the policy was *recommended* to her – albeit to her recollection, by the financial adviser. The section of the mortgage application relating to PPI continued the theme of this policy being something that was recommended. This section did not *have to* be completed, and given that the policy appeared to be suitable for Miss C's needs, that seems to be the most likely reason she chose to take it out.

I would go on to mention that the 'special conditions' included with the mortgage offer only mentioned the requirement for Miss C's endowment to be maintained to support the mortgage, and for appropriate buildings insurance to be in force. No specific mention was made of the PPI policy in this section of the mortgage offer.

Whilst I am satisfied, therefore, of the likelihood that Miss C understood the policy was optional, I need to establish secondly if her information needs were met regarding the terms and conditions most likely to affect her decision to take it out – such as any exclusions to the cover provided, and its cost.

I find that the cost of the policy – and the corresponding monthly benefit – were clearly detailed on the PPI section of the mortgage application itself, and repeated on the mortgage offer one month later (which was still about two months prior to the mortgage completing). So although I do not know what was discussed with Miss C personally, on balance I am persuaded that there was likely to have been timely disclosure of the cost information.

It does not seem Miss C would have expected to be affected by any of the policy's *significant* limitations: for instance, she has said she was in good health and not suffering from any pre-existing medical conditions. Miss C has mentioned in her complaint questionnaire that she took voluntary redundancy in 2010 and found she was unable to claim on the policy. Also, that had she known that the policy did not protect the mortgage in the event of her death, she would have looked elsewhere for different cover.

Putting aside the fact that the above comments by Miss C do suggest she was interested in protecting her loan, I need to point out that the mortgage was protected against her death via the endowment policy. So any additional life cover element within the PPI policy would have duplicated her existing insurance.

I am also not aware of any PPI policies that give the policyholder full protection against acts that are voluntary, and this would go against the very principle that insurance is obtained at competitive rates because it only protects against the unexpected. That being the case, the

exclusion of voluntary redundancy was not a significant limitation of the policy that the sales representative was obliged to draw to Miss C's attention. But I see that it was set out in the policy document which Aviva sent to her when the policy went into force.

Miss C's representative has also suggested that Aviva's agent stood to benefit financially from the sale of the policy, and that any commission paid was done on a 'secret' basis. But the only requirements in the industry code at the time of this sale were to disclose commission if the intermediary was acting on behalf of the consumer *and* the consumer asked about commission.

It is far from certain in this case that Aviva's agent was acting on Miss C's behalf or that it owed her any fiduciary duty, and I have not seen any evidence that she asked about commission. Moreover as any such commission was already taken into account in the costs quoted to Miss C, I could not fairly conclude that its further disclosure would have meant that she would not have gone ahead with a policy she seems to have been otherwise happy with.

decision

For the reasons set out above I am not persuaded that Miss C has suffered detriment as a result of any failing on Aviva's part in the sale of the PPI cover. It follows that I do not uphold Miss C's complaint or make any award against Aviva Insurance Limited.

Gideon Moore
ombudsman