

complaint

This complaint concerns a single premium payment protection insurance ("PPI") policy taken out in 2009 by Ms F in connection with a personal loan application to Santander UK Plc trading as Abbey National ("Santander"). Ms F says that Santander mis-sold the PPI to her.

background

Ms F took out a PPI policy when she applied to Santander for a loan. Ms F has given a number of grounds in support of her complaint that this PPI policy was mis-sold to her. Our adjudicator recommended that the complaint should be upheld.

my findings

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 considered the issues in accordance with our general approach to assessing complaints about the mis-sale of PPI, which is well-documented. This includes taking into account the law and good industry practice at the time the policy was sold and any regulatory rules and guidance relevant to the complaint. In essence, the questions I need to consider are:

- whether, in giving any advice or recommendation, Santander took adequate steps to ensure that the product it recommended was suitable for Ms F's needs;
- whether Santander gave Ms F 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.

If there were shortcomings in the way in which Santander sold the policy, I then need to consider whether Ms F is worse off as a result; that is, would she have done something different – for example, by not taking out the policy – if there had been no shortcomings.

Where I cannot say for certain what has happened, I will make my findings on the balance of probabilities, ie what I consider *more likely than not* to have been the case, based on evidence submitted on behalf of both Ms F and Santander.

I have considered all Ms F's grounds of complaint in reaching my decision. On the basis of the evidence before me, I am satisfied that it is reasonable to conclude that the complaint should be upheld, for largely the same reasons as the adjudicator found.

Both parties accept that Ms F's application for the PPI policy was made over the internet at the same time as she applied for a loan. After she submitted her application, a credit agreement was sent to her, which she signed and returned. I agree that it was a sale which took place over both the internet and post; that is, Ms F applied by completing relevant information online by 'ticking' boxes. She subsequently received documentation, and signed and returned the paper credit agreement.

Ms F has said that, whilst she was completing the internet application, she telephoned Santander to ask about the PPI policy. She says that the bank's representative said to her that *at her age, it would be irresponsible not to take out PPI*. Santander has not been able to confirm or not whether a telephone conversation between Ms F and a member of its staff took place.

I have carefully considered this point and Ms F's clear and consistent testimony – which I find persuasive. On balance, I think it is more likely than not that a telephone conversation broadly along these lines did take place, and therefore acknowledge the possibility that Ms F was advised to take out the policy – or else might have considered that taking the policy might assist her chances of obtaining the finance; but because I am upholding this complaint in relation to another concern, I do not consider that I need to make a finding on either of these issues.

Ms F's information needs

Whether or not Santander recommended the policy to Ms F, it also had a duty to provide information that was clear, fair and not misleading in order that Ms F could make an informed choice about whether to purchase the policy given her own personal circumstances at the time of purchase.

Santander has said that Ms F had sufficient information available to her to enable her to make the decision and that, in any event, any clearer information would not have altered her decision to buy the policy. It says that it took all reasonable steps to ensure that all applicants read and understand the information about the policy. And it says that Ms F confirmed this by ticking a box next to a declaration:

'I have read and understood the Key facts about our insurance services and the payment protection policy summary and understand the features and benefits as well as the significant exclusions and limitations'.

However, I see that this declaration was situated on the document *below* the election about whether or not to take the policy (by tick box). And it was even situated *below* a declaration that she understood that Santander was not providing her with advice. So this declaration was the penultimate paragraph of the PPI application – and the very last paragraph in this section only encouraged her to read the policy itself (and did not require a tick).

There was no wording in the application form stressing to her how important it was for her to read the conditions of the policy in the context of her own personal circumstances. Nor was it emphasised to her that she should check that it was suitable for her *before* she ticked to take PPI.

As a result I do not think that her attention was drawn to the policy summary *as a priority*. Nor was she told of the importance of ensuring that none of the significant exclusions and limitations applied to her.

Ms F was clear from the outset that she took this loan to consolidate other borrowing. It is likely, therefore, that at the point of sale she would have wished to have flexibility in her finances – in other words the ability to refinance again without hindrance or unnecessary cost. The PPI policy was sold to her was paid for by a single premium, the cost of which was loaned to her alongside her personal loan. And I see that the PPI policy did not provide for a pro-rata refund of premiums if cancelled after the 30 day cooling off period. In my view the fact that Ms F would not receive a pro-rata refund if she cancelled the policy early, was a significant feature of the policy and made it inflexible. And I am not persuaded that this feature of the policy was sufficiently brought to Ms F's attention when she was making a decision about whether or not to buy it. I say this for the following reasons:

- there was insufficient emphasis in the presentation of the policy to bring to Ms F's attention the importance of the restrictions or limitations affecting the policy (as I refer to above). Nor was she alerted to the fact that any of these limitations or restrictions may be so significant or onerous that they could possibly lead her to reconsider her first thought to opt for the policy.
- The last page of the policy summary (even if she had read it) says that a partial refund of the policy will be made if it is cancelled early. A table shows the percentage of the policy which would be refunded if the policy was cancelled, but relates to various lengths of policies. No illustrations (of real figures) are given and, in my opinion, the table is complicated and unlikely to have been sufficient to alert Ms F to the possible shortcoming of the policy.
- Also in this section of the policy **summary** (dealing with early cancellation), the reader is referred to the "*Cancelling this insurance or repaying your loan early*" section of the policy **document**. So, to find out *full* detail about this significant term, Ms F would have had to open a further document (which she was encouraged – but not *required* – to read) and would have had to read both documents together to get a full details of the term. I do not consider that this made the information easily accessible to or understandable by her.

So, in my opinion, Santander did not meet Ms F's information needs in that information about a significant term was not presented in a way which was clear, fair and not misleading. Ms F was clear, when she took the policy, that she was consolidating debt – and may very well have needed to do so again. And I consider that, if she had known about the policy's cancellation terms, she would probably have acted differently; that is, I think that, knowing she was not entitled to a pro rata refund if she cancelled the policy early, she would more likely than not have declined to take this PPI policy. It follows that I have concluded that Santander did mis-sell this PPI policy to Ms F.

my final decision

My final decision is that I uphold Ms F's complaint against Santander UK Plc and I require it to pay fair compensation as follows.

I understand that Ms F has cancelled the PPI policy, but that her loan is still running. Santander UK Plc should therefore:

- A. Restructure the loan (without charge to Ms F) so that:
 - any outstanding PPI is removed, and
 - the number and amounts of any future loan repayments (including any interest and charges) are the same as they would have been if Ms F had taken out the loan without PPI.
- B. Work out and repay the extra monthly payments paid by Ms F because PPI was added to her loan by:
 - calculating how much the loan payments would have been if Ms F had taken out the loan without PPI
 - subtracting those amounts from what Ms F actually paid and paying her the difference
 - paying Ms F interest (simple, not compound) on each of these amounts at the rate of 8% a year from the date each payment was made to the date the redress

is paid[†]

- taking into account any PPI premium refunded to Ms F when the policy was cancelled or the value of any successful claim.

C. Write to Ms F to set out what she still owes and how much she will pay and when as a result of (A). This should include the details of the calculations and amounts under (B).

If Ms F wants to use any money she receives to reduce the loan, Santander UK Plc should allow this. But it cannot require Ms F to reduce the loan to less than it would be now had Ms F not bought the PPI policy.

[†] I understand Santander UK Plc is required to deduct basic rate tax from this part of the compensation. Whether Ms F needs to take any further action will depend on her financial circumstances. More information about the tax position can be found on our website.

Ms F should refer back to Santander UK Plc if she is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Christine Vine
ombudsman