

complaint

Mr and Mrs D have complained that they effected a decreasing term assurance (DTA) policy when arranging a mortgage because Lloyds TSB Bank Plc advised them that the mortgage would not be granted unless they also effected the DTA policy.

Their complaint has been presented by Mrs D, who says that they were not asked whether they had any existing insurance or employer benefits that would cover their repayments. She feels that *she* was pressured into effecting the policy as a condition of the mortgage being approved.

Mr and Mrs D cancelled the policy in February 2009, after they had redeemed their mortgage and they have requested a refund of all the premiums they have paid to this policy, plus interest at the appropriate rate.

In response, the business submitted that Mr and Mrs D's complaint was time-barred under the 'three-year rule' because they cancelled the policy in February 2009 and did not complain until April 2012. In other words, they ought reasonably to have been aware that they had cause for complaint more than three years before they did complain.

background to complaint

Mr and Mrs D's complaint was investigated by one of our adjudicators, who concluded that it should not be upheld because he was not convinced that the policy was mis-sold.

While the adjudicator could not be certain what was actually said to Mr and Mrs D when the mortgage was arranged in the meeting with the adviser, he could appreciate the reasons for a decreasing term assurance policy being recommended to repay the capital loan in the event that either Mr or Mrs D died within the mortgage repayment term.

Further, he did not feel that it was unreasonable for a policy of this type to be recommended given Mr and Mrs D's circumstances at the time and could find no evidence to suggest that the policy was, or was not, a condition of the mortgage.

He concluded that, if Mr and Mrs D were led to believe that they were required to effect the DTA policy as a condition of the mortgage agreement, and they were uncomfortable with the mortgage terms and conditions, they were not obliged to proceed with the mortgage application.

In response, Mrs D has stated that she already had protection in place through her employment that paid salaries in full for 12 months on suffering ill-health. She also held life cover within two company pension schemes. They already owned a property in Australia which had been mortgaged without the need for life assurance. They also had substantial savings, which they say could have been used to repay the mortgage at any time, if necessary, and their joint salary was more than the capital loan. They were surprised, but accepted, that it was usual in the UK for a life assurance policy to be effected as a condition of a mortgage application.

As it is, Mr and Mrs D retained the policy after they redeemed the mortgage until 2009 in the belief that any future borrowing would require them to hold life cover. The recent publicity regarding the sale of PPI policies caused them to revise their belief that protection was obligatory.

In reply, while the adjudicator accepted that Mrs D held benefits with her employer covering death, illness or disability, if her employment changed during the term of the mortgage, these benefits could be lost. Accordingly, notwithstanding how the DTA policy was sold to them, his opinion remained that the policy was a suitable recommendation.

As no agreement has been reached in this complaint, it has been referred to me for review.

my findings

I have considered all the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I find that I agree with the conclusions reached by the adjudicator, and for essentially the same reasons.

When arranging a mortgage loan in February 1998, Mr and Mrs D effected a decreasing terms assurance (DTA) policy through the business which would pay an amount equivalent to the outstanding balance of this balance if Mr or Mrs D died within the mortgage term.

First, I do not accept the submission made by the business that Mr and Mrs D's complaint is time-barred. If, as they submit, Mr and Mrs D believed that they were required to effect the policy as a condition of the mortgage agreement, it was understandable that they would then cancel the policy in February 2009 after they redeemed the mortgage. At this point, they would not have cause for concern, as their motive for cancelling the policy was that the mortgage had now been repaid rather than any realisation that they may not have been obliged to effect the policy when the mortgage was arranged.

It would seem that Mr and Mrs D complained when publicity surrounding the sale of payment protection insurance (PPI) policies emerged in 2012 as their letter of complaint to the business explicitly refers to the sale of their *payment protection (PPI) policy*.

However, it transpired that it was not necessary for Mr and Mrs D to complete the 'payment protection insurance: customer questionnaire' because the DTA policy they effected is not a PPI policy.

Briefly, a PPI policy would pay an income benefit equivalent to the monthly costs of a loan if Mr or Mrs D were ever made unemployed or suffered long term incapacity that prevented them working. Furthermore, if a PPI policy was effected in joint names, it is likely that the income benefit would be split according to a pre-determined percentage such that, in the event of a claim by Mr or Mrs D, the amount payable would only be a proportion of the total benefit (as the other policyholder would remain in work earning an income).

On the other hand a DTA policy pays a capital sum in the event of Mr or Mrs D's death during the policy term equivalent to the outstanding balance of the mortgage. Their mortgage loan is therefore repaid and the provision of ill-health and /or disability benefits by their employer is irrelevant in these circumstances.

I appreciate Mrs D's point that she holds life assurance benefits within her occupational pension scheme(s) that would be sufficient to repay the outstanding mortgage loan if she died. However, these benefits exist only to protect Mr D, if Mrs D died. In any event, if the mortgage was repaid from pension scheme benefits, there may not be much, if any, excess benefit on Mrs D's death to meet Mr D's expenses of daily living, given he could no longer

rely on an income from her. Furthermore, there is no evidence that Mr D held alternative life assurance cover on his life that would otherwise repay the mortgage if *he* died but for the existence of the DTA policy.

While Mrs D has also referred to savings which could be used to repay a loan in the event of death, I am not persuaded that consumers would be prepared to utilise life savings for this purpose. Otherwise, I would question why Mr and Mrs D would borrow an equivalent sum in the first instance if they were prepared to make use of life savings (rather than the policy) to repay the mortgage on death.

Notwithstanding this, there is insufficient evidence which suggest to me that Mr and Mrs D were required to effect the DTA policy as a condition of the mortgage being approved.

However, if the business did apply a discretionary condition that required Mr and Mr D to effect life cover in order to secure the mortgage (which is possible, if Mr and Mrs D already held a mortgage on another property), they were free to accept or reject the terms of this mortgage and obtain the loan through another lender.

On balance, while Mrs D has said that the life cover provided by the DTA policy was not necessary for them, and that they would not have effected the policy if they had not been required to do so, I am not persuaded that this policy was appropriate for them for the reasons give above.

my final decision

My final decision is that I do not uphold Mr and Mrs D's complaint.

Kim Davenport
ombudsman