

## **complaint**

Mr and Mrs L complain that Leek United Building Society ("LUBS") mis-sold them payment protection insurance ("PPI") with their mortgage.

## **background**

Mr and Mrs L applied for a LUBS mortgage in July 1997 using a mortgage broker. A couple of weeks later they applied for PPI. The policy cost £10.94 per month and would've paid a benefit of £400 for up to 12 months if Mrs L was too ill to work.

Mr and Mrs L say their broker told them LUBS required PPI as a condition of their mortgage and that unless they agreed to the insurance their mortgage application would fail.

LUBS objected to us considering this case because they thought Mr and Mrs L didn't complain in time. This service issued a separate decision confirming that we had seen no evidence to show Mr and Mrs L ought to have been reasonable aware of cause for complaint over three years prior to it being made. And we decided we could consider this complaint.

We then looked into the merits of Mr and Mrs L's complaint and our adjudicator thought it should be upheld. LUBS doesn't agree, so the case has been passed to me for a final decision.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We've set out our general approach to complaints about the sale of PPI on our website and I've taken this into account in deciding this case.

LUBS still thinks that we shouldn't consider this complaint. They say in 2002 Mrs L approached them and asked for information about her level of protection. She was concerned about being underinsured. LUBS say this shows that Mr and Mrs L knew they had the policy and so they ought to have been reasonably aware about their cause to complain.

However, I don't agree. Yes, Mr and Mrs L knew they had the policy. But they never complained that they didn't know about it. They say they thought they had to have it. And just because they wanted to make sure they had sufficient cover five years later I don't think it automatically follows that they knew the policy wasn't a condition of the mortgage. And so I don't think this shows that they should've been reasonably aware that there was cause for complaint. So I'm still satisfied that we can consider this complaint.

LUBS provided a copy of Mr and Mrs L's mortgage application form. It asked them if they required a quote for PPI and they indicated that they wanted a quote to cover Mrs L only. At this point this was just an expression of interest. LUBS then provided Mr and Mrs L with a quote, an application form and an information leaflet.

Mr and Mrs L say the broker told them LUBS required them to have PPI. I don't know what exactly happened so many years ago. I looked at the documents LUBS provided and I haven't seen anything that would suggest PPI was a condition of the mortgage. However, as

I'm upholding this complaint for a different reason I'll not make a finding on this complaint point.

LUBS say they didn't provide Mr and Mrs L with any advice and bearing in mind that they didn't seem to have any direct personal contact with Mr and Mrs L, I think this is most likely to be correct. However, they still had to provide Mr and Mrs L with enough information to allow them to decide for themselves whether the policy was right for them.

Mrs L had an injury which she suffered during childbirth several years before the sale. Looking at the policy document I can see that any claims for disability which result as a consequence of complications arising from childbirth are excluded. So if her injury had caused Mrs L to be unable to work she couldn't have claimed on the policy. I think this exclusion would've mattered to her. Mrs L told us she had spells of time off work because of it and was taking painkillers. She says she isn't working anymore. This is not entirely down to her injury, but she has to be careful what she does. I think Mrs L would've seen her injury as one of the most likely reasons to be off work and wanting to claim on the policy.

I've looked at the information LUBS provided to Mr and Mrs L. Unfortunately, LUBS couldn't provide an information leaflet from 1997. So I don't know what exact information it included. But LUBS sent us a copy of a leaflet which was in use from May 1998 and so I think it's likely it would've been similar. The exclusions of the policy are listed here. However, whilst the leaflet mentions that childbirth and pregnancy in itself isn't covered by the policy, it doesn't mention that also complications arising from it aren't covered.

Mr and Mrs L would've received a full policy document after the policy was set up. However, at that point they'd already bought the policy and the necessary information about exclusions should've been clearly drawn to their attention *before* they signed for PPI. And in any case the exclusions weren't particularly drawn to their attention within the document. So I don't think this information was good enough.

The PPI application included a declaration at the end including the sentence "*I declare that I'm in good health and free from physical or mental infirmity*". I think it's unlikely that much attention would've been paid on this quite long, densely written and small printed section. And even if I assume Mrs L read it, I think she could've considered herself to be generally to be in good health and yet still have been caught out by the policy term.

LUBS says the PPI application form states that it's necessary to declare any material facts which could influence the application to the insurer. And if there were any doubts about what those material facts could be, any facts should be disclosed and the insurer would decide if they were relevant. LUBS say Mrs L never told the insurer or LUBS about her medical issues. However, LUBS should've informed Mr and Mrs L about the main exclusions of the policy regardless of whether they knew about Mrs L's medical history. And I don't think it's reasonable to expect consumers to disclose any facts without giving an indication of what potential relevant factors could be.

On balance I'm not persuaded that the exclusions were presented clearly enough to Mr and Mrs L. And if they had realised that Mrs L's medical condition meant a claim on the policy wasn't likely to be successful, I don't think they would've bought the policy.

### **putting things right**

LUBS should put Mr and Mrs L in the position they'd be in now if they hadn't taken out PPI. The policy should be cancelled, if it hasn't been cancelled already, and LUBS should:

- Pay Mr and Mrs L the amount she paid each month for the PPI
- Add simple interest to each payment from when they paid it until they get it back. The rate of interest is 8% a year †.
- If Mrs L made a successful claim under the PPI policy, LUBS can take off what she and Mr L got for the claim from the amount it owes them

† HM Revenue & Customs requires LUBS to take off tax from this interest. LUBS must give Mr and Mrs L a certificate showing how much tax it's taken off if they ask for one.

### **my final decision**

I uphold Mr and Mrs L's complaint for the reasons I've explained and request Leek United Building Society to pay the compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to accept or reject my decision before 16 May 2016.

Nina Walter  
**ombudsman**