

complaint

Mr V and Mr A say Bank of Scotland plc (trading as Halifax) mis-sold them a mortgage payment protection insurance (PPI) policy in 1992. To make things easier, I'll just refer to the seller as being Bank of Scotland in the rest of this decision.

background

Our adjudicator didn't uphold Mr V and Mr A's complaint. As they didn't agree with the adjudicator's opinion, Mr V and Mr A's complaint was referred to me. Provisionally, I also took the view that their complaint shouldn't be upheld. But, as I'd added to the reasoning given by the adjudicator, I issued a provisional decision. That decision set out my views on the key issues and the conclusions I'd provisionally reached. I gave Mr V, Mr A and Bank of Scotland the opportunity to provide any further information or comments before I made a final decision.

Mr V and Mr A made a number of representations in response to my provisional decision. I've summarised these below:

- the provisional decision was based on supposition rather than evidence. It was a face saving exercise backing up the opinion of the adjudicator, in which facts were missed.
- I'd failed to answer the questions they'd posed.
- it wasn't made clear to them by Bank of Scotland that the policy was optional, and they were coerced into buying it. They felt their word was not good enough for me about their savings, but that I'd accepted Bank of Scotland's word about there being no coercion and making it clear PPI was optional as being good enough.
- Bank of Scotland has likely mis-sold many PPI policies, but it's being treated as a more reliable witness than them, when they have diligently been truthful in what they have said. Where a business has not provided evidence to exonerate itself, its track record of past sales/behaviours should apply.
- they paid a total of £43,904 in lump sum payments throughout the life of the mortgage. These were from savings from various banks. Their savings were in fixed long term arrangements, so weren't available at the time they took out the mortgage, because they would've incurred penalty charges if they'd withdrawn them early. They would've had to pay more in incurred charges for cashing in their investments early than they would've had to pay in mortgage interest. These lump sum payments hadn't been fully considered by me. It's not fair for me to say that they preferred to take a mortgage rather than reduce their borrowing. It was financially more beneficial for them to wait for their savings to mature.
- Mr V produced a list of his account holdings, compiled by him, dated 29 August 1992. He said he prepared this once the mortgage was up and running. He explained he'd forgotten he'd prepared it and had given it to Mr A many years ago. He added that they had gone through all their documents and recently found this. He said this diminished the information given by Bank of Scotland about the maximum balance in his current account.
- Mr V said he'd been misquoted in the provisional decision. He hadn't said he used his Bank of Scotland account to pay large sums off his mortgage, he said he *"believes that some of the lump sum repayments came from this account"*. There is a subtle difference and I had unfairly jumped to the conclusion that Mr V's word was unreliable. He said I'd believed Mr V had only one savings account, the Bank of Scotland one, opened in 1994.

- they opted for a repayment mortgage because they knew they were contractually free to pay the mortgage off as soon as their savings became available.
- culturally they believe in working hard, saving and using their monies appropriately, with careful consideration. They concentrated on paying off the mortgage rather than taking holidays. This hadn't been taken into consideration.
- they have been consistent with their message about being pressured into buying the PPI. English is a second language for them and they can only express their experience to their best of their ability. No one else can minimise or discredit their experience.

As Mr V and Mr A don't accept my provisional decision, their complaint comes back to me to decide.

Bank of Scotland made no comment on my provisional decision.

the facts

the mortgage

Mr V and Mr A took out a joint mortgage in 1992 for £61,000. They cleared the mortgage within seven years. They made regular lump sum payments towards their mortgage. The first lump sum payment was made in April 1993, around 8 months after their mortgage began. The mortgage ended in 1999.

Mr V says he became the sole mortgage holder around 1993.

the policy

Alongside their mortgage they took out a monthly premium PPI policy. The PPI policy initially cost £32.50 per month and provided £650 per month of mortgage repayment cover. This was enough to cover their mortgage repayments in full. The policy would've paid out for up to 12 months per successful claim for accident, sickness and unemployment.

Based on the limited information now available, Bank of Scotland can't say if both Mr V and Mr A were covered under the policy, or if just Mr V was covered. Initially it said only Mr V was covered. Mr V said the PPI was in his sole name.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Our general approach to complaints about PPI is on our website and I've followed it here.

Mr V and Mr A have written to us on many occasions setting out the points that they feel should be considered in their case. I thank Mr V and Mr A for the time and effort that they have put into arguing their case. I can see they feel very strongly that their complaint should be upheld. They have put their points across clearly.

Mr V and Mr A have also asked me to answer some questions, which they think I must answer to decide this complaint. It's been explained to them that it's not our service's practice to answer specific questions from parties about the merits of the case we are deciding. We will consider all the evidence given, but won't necessarily comment in our

decision on each and every point made, unless in our view it's necessary to do so for the fair resolution of the complaint. I'd like to assure Mr V and Mr A again that I have carefully read and considered everything they've sent in – as well as considering the information that Bank of Scotland has sent us. I have reviewed their papers on a number of occasions now. My findings are my own, and are independent of the adjudicator's.

As I said in my provisional decision, this complaint relates to something that happened around 27 years ago. So there is very little paperwork from the time now available. This is understandable. Banks aren't obliged to keep records indefinitely. They often keep records for only six years. Mr V and Mr A's mortgage account was closed around 20 years ago. Similarly, I wouldn't expect Mr V and Mr A to have a detailed recollection or to have kept all their paperwork from this long ago.

What this means is that there are gaps in the information and evidence. Where this is the case, I have to base my decision on the balance of probabilities – in other words, on what I consider is most likely, given the available evidence and wider circumstances.

So that this decision can be read independently of my provisional decision, I have repeated relevant parts from that decision here, as well as dealing with the additional representations made since then.

Having reviewed everything that Mr V, Mr A and Bank of Scotland have said and provided, I am still of the view that more likely than not this policy wasn't mis-sold. I'll explain why.

Mr V and Mr A's representations (before my provisional decision)

In my provisional decision, I summarised Mr V and Mr A's main areas of complaint, at that time, as being:

- they were pressured into taking PPI by Bank of Scotland and it had not produced any evidence to the contrary. They didn't need or want the cover.
- Bank of Scotland had not provided any evidence to show that it made it clear to them that PPI was optional. They were coerced into buying PPI, believing if they didn't purchase it they wouldn't get the mortgage.
- the policy didn't provide them with any benefit.
- the adjudicator's opinion was biased in favour of the business and unfair. It didn't take into consideration all material facts and what they had said.
- they both had savings worth more than 12 months of their salaries. Coupled with their regular salaries, and Mr V's extra income from a second job, this allowed their mortgage to be settled within seven years.
- they were in good health and had secure employment.
- when asking for evidence of their savings it was unfair for us not to take account of the length of time that had passed, the fact our questionnaire didn't point out that evidence of savings was required, and that their mortgage had been settled with monies from various accounts which had long been closed. Mr V said he couldn't remember the amount of his savings. Mr A said he thought he had around £20,000 in savings at the time. They said the adjudicator had failed to take into account the fact that the mortgage was settled within seven years.
- the evidence they had provided of their later financial position provided a true reflection of their financial stability at the time they bought the PPI.

To decide this complaint, I've also considered these representations, on top of the ones made in response to my provisional decision.

pressure and choice

I can't know what was discussed at the time the PPI was sold. There are no contemporaneous notes from the time to show me this. As I've said before, that's not surprising given how long ago this policy was sold.

Mr V and Mr A say, in summary, that as Bank of Scotland can't provide any evidence, I should take into account Bank of Scotland's past sales conduct when considering this complaint.

This service considers each case on its own individual set of facts and merits. It is fair to say that this service has seen a number of mis-sale complaints involving Bank of Scotland mortgage PPI policies, some of which may have been sold around the same time as Mr V and Mr A were sold their policy. But not all such policies were mis-sold and I'm not aware of any identified systemic failure relevant to the sale of this policy. So, that takes me back to the situation where I must consider this case on its own individual facts and circumstances, based on the available information about this particular sale.

To decide whether there was any coercion, I've carefully taken into account what Mr V and Mr A recall from the time. In particular, Mr V and Mr A have said they were made to feel *"insecure and pressurized into purchasing the PPI policy, which I then did purchase"*. They said they remembered feeling pressured into buying PPI because of the *"worst case scenarios that were presented to me by the sales person"*.

Establishing whether customers were unfairly pressured into taking PPI is a very subjective area. Based on the limited information now available, and taking into account what Mr V and Mr A recall about why they felt this amounted to coercion, I've decided that this is not enough for me to uphold this aspect of their complaint. I've taken into account what Mr V and Mr A have said about English not being their first language. But from what I've seen of their communication skills in their handling of this complaint, and given the nature of the jobs they held at the time of sale, I can't see that more likely than not they would've lost out because of this.

From what I've seen, I consider it more likely that the adviser was providing Mr V and Mr A with information about the PPI, so that they could make a choice about whether they wanted to buy it. It's possible that the adviser strongly recommended the PPI and encouraged them to have it, which might have felt like pressure to Mr V and Mr A, but this was not taking away their choice. And I can't see, for example, that they were clearly misled into believing that they had to take PPI to get the mortgage or to get a particular mortgage rate.

Mr V and Mr A haven't told us clearly about anything specific that Bank of Scotland did or said which in my view would've amounted to unfair pressure. So, I'm not satisfied that more likely than not they were unreasonably persuaded or pressured into buying PPI.

Also, had PPI been presented as compulsory, there would've been no need for the adviser to try and encourage them to take it by discussing *"worst case scenarios"*. So, on balance, I am also of the view that Bank of Scotland probably did make it clear that PPI was an optional and separate product and Mr V and Mr A said at the time they wanted it, having been given a fair choice about that at the point of sale.

So, I do not uphold their complaint on this ground.

suitability

Bank of Scotland has proceeded on the basis that the PPI was recommended to Mr V and Mr A at a meeting in one of its branches. Mr V and Mr A said this was the case, and I think they're likely to be right. Based on the information now available, it's not clear to me whether this was an advised sale or not (in other words, whether Bank of Scotland specifically recommended PPI to them). But, to be fair to Mr V and Mr A, I've treated it as an advised sale, as that means Bank of Scotland had the additional responsibility of advising them on the suitability of the policy for their needs.

I've also proceeded on the basis that Mr V and Mr A were jointly covered under the policy. But, even if only Mr V was covered, I still can't see that this would've made the policy unsuitable for them.

From what I've seen of their circumstances at the time, I'm of the view the policy was suitable because:

- they were eligible to take out this PPI.
- Mr V told us shortly before I issued my provisional decision that he was working in a second job at the time of sale, as well as his main job. I asked him for some more information about this. He said he was working for an agency, doing the same type of work as his main job, in his spare time at weekends or in the evenings on an ad hoc basis. He said this second income helped them clear their mortgage quicker. I have considered the position carefully. Based on what Mr V has said about his second job, I can't see that they would've lost out because of Mr V having this second job. If he wasn't well enough to work in his main job, I think it unlikely that he would've been able to work in his agency job, given it was the same type of work. So, I don't think this would've had any impact on his ability to claim on the policy for disability benefits (accident and sickness). And if he was made involuntarily unemployed from his main job, it looks as if he would've still been able to claim unemployment benefit under the policy whilst working in his agency job, as long as he overall worked less than 16 hours per week. So, I don't think the terms and conditions of the policy were onerous for someone in Mr V's situation. And I don't think this would've put them off taking out the policy.
- According to the mortgage records Mr V was earning around £17,000 and Mr A around £13,000 at the time of sale. Mr V and Mr A said the mortgage was in joint names not because of their income levels, but because they were living together with no dependants and it was usual in their family to share living expenses. However, they said it was envisaged that Mr A was going to move out and it was intended that Mr V would become the sole mortgage holder. I think PPI could've provided them both with valuable protection in these circumstances.
- I can't see that they were affected by any of the other main limitations or exclusions in the policy that otherwise could've made it difficult for them to make a successful claim. So, they could've benefitted from everything the policy offered.

- Mr A couldn't recall which employer he was working for at the time of the sale. They both said they would've got benefits through work if they were off work sick or made unemployed. But, I can't see that this made the policy unsuitable. PPI would've been paid on top of their work benefits, allowing them to use their work benefits to meet their other household expenditure.
- the policy didn't appear to be unaffordable for them and as they were paying for it monthly, it could've been cancelled at any time without them losing out financially.
- they said they got no benefit from having PPI as they were in secure jobs and in good health. But, PPI is designed to cover specific but unforeseen circumstances, so the fact that Mr V and Mr A didn't have cause to claim on the policy doesn't mean it was unsuitable for them when it was sold.
- they said culturally they were different and were focussed on paying off their mortgage as soon as possible. The PPI could've provided them with valuable protection to ensure that their mortgage repayments were met if they were off sick or lost their job, without them having to dip into their savings. I think this might've been important to them, at least in the short term, because they were reluctant to interfere with their savings plans. Also, Mr V's income from his agency work wasn't a guaranteed source of income, even though he said there was plenty of agency work available.

suitability and savings

Mr V and Mr A resisted strongly our request for additional information about their savings at the time of sale, suggesting we were acting unfairly and our motivation for requesting this information was race or age discriminatory. We tried to reassure Mr V and Mr A that where we consider particular evidence may be relevant to the outcome of the case, as with the savings information here, this service will often ask the parties to provide further information.

They provided information about their current savings. Circumstances can change over time, however, so the fact that Mr V and Mr A have a good amount of savings now, in 2019, doesn't in my view show that back in 1992 their resources were such that they didn't have any need for PPI.

They told us they couldn't approach any banks to obtain official information about their position in 1992, after such a long time, and they simply couldn't remember all of the banks they had their savings accounts with.

Mr V said he had a savings account with Bank of Scotland. He produced a passbook for this account. He suggested that Bank of Scotland might be asked about the lump sum mortgage repayments.

Under our inquisitorial remit, and given the emphasis the consumers had placed on not needing PPI because of their level of savings, this service asked Bank of Scotland to provide us with details of Mr V's accounts held with it in or around the time of sale. This information would of course have been directly available to Mr V had he asked Bank of Scotland to supply him (or us) with it. We asked Bank of Scotland for information about any accounts Mr V had with it at or around the time he took out his mortgage in 1992. It was also asked for details of the lump sum payments made to clear the mortgage.

Bank of Scotland responded and said, in summary, that in 1992, when Mr V took out his mortgage, he only had a current account with it, and that around that time the maximum credit balance in that account was about £590.

Bank of Scotland said the passbook account wasn't opened until 1994, over a year after the mortgage was taken out. I could see from the passbook there was a large deposit (relative to their mortgage) into that account, but that wasn't until 1999, so a good number of years after the mortgage was taken out.

Bank of Scotland provided information showing that Mr V and Mr A had made payments totalling over £58,000 towards their mortgage between 1993 and 1996. In the first year of their mortgage £3,200 was paid in lump sum payments. The first lump sum payment was made in April 1993, for £1200, around 8 months after they took out their mortgage. Over £25,700 was paid during the second year, £20,000 during the third year and around £9,700 in the fourth year. It's not in dispute that these lump sum payments were paid. Bank of Scotland can't say where the payments originated from. To be clear, I accept that it's possible that Mr V and Mr A may have had other savings accounts at the time of the sale of the PPI and afterwards and that the information that Bank of Scotland has provided is limited to Bank of Scotland accounts.

I think the information provided by Bank of Scotland about Mr V's account history from 1992, and the information about the account he produced a passbook for, can reasonably be relied on when considering this complaint. I say this because this information appears to have been recorded on Bank of Scotland's computerised systems, or in the passbook, at the time in question, long before this complaint was made or in contemplation.

The crux of Mr V and Mr A's case is that evidence of their early repayment of the mortgage should be good enough to show that they had enough savings at the time of the sale not to have needed the insurance.

Mr V appears now to be saying that his savings were in the region of £31,000 around the time of sale. Mr A said he recalled having around £20,000. Two days after I issued my provisional decision, Mr V provided this service with a list he said he had recently found, located with his will and prepared for use upon his death. He said this provided details of his account holdings in 1992. He said this was a contemporaneous document put together by him in August 1992. I have thought carefully about how much reliance I can place on this list. Fairly, and based on what I've seen and been told, I consider that I can place little or no weight on it. Whilst I have thought carefully about what Mr V has said, I haven't enough to independently verify the information contained in the list. Given the timing and circumstances of when this list was first sent to this service, I would need more than I currently have, to place any greater reliance on it. Importantly, however, even if Mr V had around £31,000 in savings in 1992 (which may be right), taking into account what else he's recently said about his savings (that he was waiting for them to mature), I still don't think this would've made the policy clearly unsuitable for them.

It's clear from Bank of Scotland's records that Mr V and Mr A paid over £58,000 off their mortgage between April 1993 and May 1996. But, I don't take from this that their savings and other resources must therefore have been at such a level when they took out the insurance as to make it unsuitable for them. I note in the first year of their mortgage the lump sum payments were at their lowest (totalling £3,200). Given what they've said, and their history of repayment, it seems likely that any savings they had were less accessible at the outset, and became more accessible as the investments matured over time.

So, I'm not persuaded that Mr V and Mr A's means, general circumstances and financial objectives at the time were such that the policy was clearly unsuitable for them. I think the policy could've provided them with useful protection to safeguard their home, given the long term nature of the mortgage agreement they'd entered into and that their home was at risk if they didn't keep up with their repayments.

informed choice

Bank of Scotland also had to provide Mr V and Mr A with information about the PPI that was clear, fair and not misleading, so that they could make an informed choice about whether they wanted to buy it.

Mr V and Mr A said they spread their savings around to ensure their money was safe and they could earn maximum interest. They said some of their money was held in fixed long-term accounts or long term investments, such that the money was not immediately available, but they knew it was there for their security. They've told us they made a number of deliberate financial choices when they took out the mortgage. Firstly, they took the mortgage rather than cashing in their long-term investments, because it was financially beneficial to do so. Also, they took a repayment rather than an endowment mortgage, because they intended to pay off their mortgage sooner. This suggests to me that they were capable of making informed financial decisions. I consider it highly likely, given the level of financial awareness they appeared to have, that they would've known exactly what their financial position was back in 1992.

I said in my provisional decision that it's possible that one of the reasons they were persuaded to protect their property through PPI was that Mr V might become solely responsible for the repayments, because Mr A envisaged moving out. Mr V and Mr A have said that is supposition on my part and unfounded. I also said that Mr V and Mr A might've liked the security of having savings, over reducing their borrowing. Again, they say this is unfounded and not backed up by evidence. I can't know what was in Mr V and Mr A's minds back in 1992. They've put forward their explanation for why they ended up taking PPI, when they didn't want or need it. But, there are other plausible explanations that also could be offered for why Mr V and Mr A took PPI back in 1992. For example, they might've considered it preferable and beneficial to pay the monthly PPI premium (which could be cancelled at any time) in case they lost their jobs or were too sick to work, to avoid having to cash in their long-term investments and pay early withdrawal charges to repay their monthly mortgage repayments. After all, this was an important consideration in relation to taking out the mortgage and deciding to pay interest on it. On balance, I find these other explanations more likely, given what I've said above about optionality and coercion, and what Mr V and Mr A have explained about their financial awareness at the time of sale.

Based on the limited information now available, I can't know if everything in this sale happened as it should have. It's possible it didn't. I don't know for example what Mr V and Mr A were told about the cost of the policy. Because of that, I've looked at whether they may have lost out because of anything that Bank of Scotland may have done wrong. I can't see that they have. I say this because:

- the policy appeared suitable for their needs for the reasons I've set out above;
- I've found that they likely knew it was optional and more likely than not they weren't unfairly pressured into taking it;
- from what they've said about their other financial decisions they took around the same time, they seemed able to make important financial decisions, weighing up all the choices and options available to them;
- the policy appeared affordable at £32.50 per month and could've been cancelled at any time if their situation changed or they no longer wanted PPI.

I'm not satisfied that Mr V and Mr A have lost out because of not being provided with better information, or that they would've changed their decision and not taken out the policy if given clearer information.

So, overall, and while I know Mr V and Mr A feel strongly that this policy was mis-sold and will be disappointed by my findings here, for the reasons I've explained I do not uphold their complaint.

my final decision

For the reasons explained, I do not uphold Mr V and Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V and Mr A to accept or reject my decision before 16 September 2019.

Kim Parsons
ombudsman