

complaint

Mr and Mrs R complain that they were mis-sold a regular premium mortgage payment protection insurance (MPPI) policy when applying for a mortgage in 1994. They say that Nationwide Building Society ("Nationwide"), trading as Derbyshire Building Society, ("Derbyshire") mis-sold the policy to them.

background

Having looked at the case, our adjudicator thought that the policy had been mis-sold and upheld the complaint.

Nationwide doesn't accept that and has asked an ombudsman to look at the complaint.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've followed our usual approach to PPI complaints, which everyone can read on our website. I need to decide whether Derbyshire did something wrong when it sold this policy. If so, I then need to decide if that left Mr and Mrs R worse off, and so if Nationwide needs to do something now to put things right.

I'm going to uphold this complaint, and I'll explain why.

Mr and Mrs R say that this policy was sold to them during a meeting, and that Derbyshire recommended it to them. It only covered Mr R. Due to the time that has passed, Nationwide doesn't know when or how it was sold. But it says that Derbyshire didn't recommend the policy or give any advice. That would mean that Derbyshire needed to give Mr and Mrs R the information so they could decide for themselves whether the policy was right for them. So I've thought about that first.

did Derbyshire give Mr and Mrs R clear, fair and not misleading information?

As this sale happened over 20 years ago, there understandably aren't that many documents from the time still available. There is a letter from the Derbyshire branch manager thanking Mr and Mrs R for their mortgage application in February 1994. It may be that application came through a third party. This letter says that Mr and Mrs R must take house and contents insurance as a requirement of the mortgage. It also says they should protect their mortgage repayments through MPPI and that leaflets are enclosed.

But there isn't a copy of the leaflet available, so I don't know what it said or whether it gave clear information. There also isn't an MPPI application form available. So I've no way of knowing what information Derbyshire gave Mr and Mrs R when they were deciding whether to take the MPPI.

Nationwide says that the leaflet did provide clear information. But the leaflet it's referring to is one from November 1994, so I don't think it's likely to be the same as that which seems to have been sent in February of that year. Nationwide also says that the full policy document would have been sent to Mr and Mrs R after they'd applied for the MPPI. That, of course, means they would have already made their decision about whether to buy the policy before they had that document. So that wouldn't have helped them in making that decision. Also, the document itself is written in small type and densely set out. It doesn't *highlight* that there

are significant terms of the policy (such as exclusions) that the customer needs to check and think about. In order to be clear, fair and not misleading, it would need to do that.

So I don't think Derbyshire gave Mr and Mrs R clear information about the important features of this policy. I then need to decide whether that failure made a difference to them.

would Mr and Mrs R have taken the MPPI if they'd had clear information about it?

In 1992, Mr R had been injured in his job and required back surgery. His injury was so bad that he could no longer do his job, and he was medically retired, with a pension for the rest of his life. He was able to do a different type of job, but it's clear that the injury and surgery were of some significance.

The policy won't cover certain medical conditions, namely:

"any physical defect infirmity medical condition or chronic recurring sickness for which treatment has been received in the 12 months prior to the date of commencement of this insurance unless it has been declared to and accepted by the Insurer"

Mr and Mrs R applied for the MPPI sometime between February and May 1994. I can see that he was entitled to his medical retirement pension from the end of October 1992. Thinking about the dates, and taking into account the type of surgery he had, I think it's very likely that Mr R would have had some sort of treatment on his back in the 12 months before they took out the MPPI. So I don't think he would have been able to claim if he weren't able to work due to a back problem.

Mr R has told us that he actually didn't ever have a day off work once he started his new job. Nationwide says that means, "...this was a one off surgery that never raised any medical issues afterwards...". That may ultimately have been the case. But I don't think Mr R would have been confident of that when taking out this MPPI in the spring of 1994. I think the exclusion would have concerned him and likely put him off taking out the policy. His surgery and medical retirement were at that point comparatively recent, and would likely have still featured quite strongly in his thinking.

Nationwide also says that Mr R could still have used the policy for unemployment cover, or disability not related to his back. That is true. But I still think that the exclusion discussed above would have had a major impact on his decision making. As I've explained, I think he would have been concerned about the possibility of needing extended periods off work because of his back. And so if he'd understood he wouldn't have been able to claim in those circumstances, I don't think he'd have wanted this MPPI policy. It follows that I uphold this complaint.

putting things right

Nationwide should put Mr and Mrs R 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 Nationwide should:

- Pay Mr and Mrs R the amount they 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 15% a year until April 1993 and 8% a year from then on†.
- If Mr and Mrs R made a successful claim under the PPI policy, Nationwide can take off what they got for the claim from the amount it owes them.

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

my final decision

For the reasons I've explained, I uphold this complaint and direct Nationwide Building Society to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs R to accept or reject my decision before 5 November 2015.

Siobhan McBride
ombudsman