

complaint

Mrs B complains about the sale of a monthly premium payment protection insurance (PPI) policy sold in connection with a credit card account in 2002. Mrs B believes National Westminster Bank Plc (NatWest) mis-sold her the policy. The core of Mrs B's complaint is that she was not aware the policy was optional.

background

I issued my provisional decision in May 2014, a copy of which is attached and forms part of this final decision. In my provisional decision I explained why I was minded to uphold Mrs B's complaint. I invited all parties to let me have any further submissions before I reached a final decision. Both NatWest and Mrs B have stated they have each received my decision. Mrs B says she has nothing further to add. NatWest responded by letter and says it does not agree with my provisional decision.

In summary, NatWest say:

- The application form for the credit card confirms that the policy was optional and separate; and
- Mrs B was provided with adequate information and could benefit from the policy

my findings

I thank NatWest for their submissions and I have considered them alongside all the evidence and arguments already submitted by them in order to decide what is fair and reasonable.

It may be helpful at this stage for me to explain that, although NatWest has raised a number of concerns in response to my provisional decision, I will *only* be addressing those issues I consider to be materially relevant to the complaint in hand. NatWest should note, however, that although I may not address each individual point raised, I have given careful consideration to all of their submissions before arriving at my decision.

Having considered all of the evidence, I have reached the same conclusions as set out in my provisional decision and for the same reasons. However, I would like to make the following observations:

- NatWest has referred to previous ombudsman decisions. At best a previous decision sits on its own facts and circumstances and is decided upon its own merits on a case-by-case basis. I have to be satisfied that in *Mrs B's case* the process of selecting PPI was optional.
- In her testimony Mrs B says she did not complete the credit card application form and that it was completed by a NatWest representative. As a result Mrs B says she was not aware she had a choice about whether or not to purchase PPI. In their response NatWest says it is unable to find any evidence of direct staff involvement at the time of the sale. However, in *this case* I do consider Mrs B's account genuine and honest. I am also mindful of Mrs B's testimony that she was not aware she could cancel the insurance until 2007. And the very fact that Mrs B went ahead and paid for a benefit she believed was not needed suggests to me that Mrs B was not likely to have been aware that the policy was optional.

- Finally I find Mrs B's circumstances at the time to be quite compelling in my considerations about whether it is likely that she was not given the option to decline the cover. She was in secure employment; if she was off sick she would have been entitled to six months or more but less than twelve months full pay from her employer; she had other means she could have used to rely upon to meet her repayments and she was in good health at the time of taking out the policy. I am persuaded that in light of her alternative means, if Mrs B had been provided with a choice about the PPI, it is likely that she would have declined it.

It follows that I affirm my provisional decision to uphold Mrs B's complaint. I direct NatWest to pay her fair compensation as detailed in my provisional decision and repeated below for clarity.

fair compensation

Mrs B should be put back in the position she would have been in now if she had taken out the credit card without the PPI policy. I understand the PPI policy has been cancelled. NatWest should:

- A. Carry out a hypothetical reconstruction of the credit card account to find out what the current balance of the credit card account would have been if Mrs B had paid the same monthly payments, but the PPI policy had *not* been added to it. This will involve NatWest removing the PPI premiums, any interest that was charged on the premiums and any charges (and interest on those charges) that would not have applied if the PPI had not been added to the account. NatWest should then pay Mrs B the difference between the current balance and what the current balance would have been without PPI.
- B. Pay Mrs B interest at 8% per year simple[†] on any credit balance for any periods when the reconstructed account would have been in credit for the period it would have been in credit.
- C. Set out in writing to Mrs B how it has calculated the compensation in A and B.

[†] I understand NatWest is required to deduct basic rate tax from this part of the compensation. Whether Mrs B needs to take any further action will depend on her financial circumstances. More information about the tax position can be found on our website. Mrs B should refer back to NatWest 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.

my final decision

My final decision is that I uphold Mrs B's complaint and direct National Westminster Bank Plc to pay her fair compensation as detailed above. I make no further award against National Westminster Bank Plc.

Sharon Kerrison
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mrs B complains about the sale of a monthly premium payment protection insurance (PPI) policy sold in connection with a credit card account in 2002. Mrs B believes National Westminster Bank Plc (NatWest) mis-sold her the policy. The core of Mrs B's complaint is that she was not aware the policy was optional.

background

In April 2001, during a branch meeting, Mrs B obtained a credit card from NatWest. At the same time Mrs B was sold a monthly premium PPI policy.

The cost of the PPI policy was £0.77 per £100 of the outstanding monthly balance. It provided a monthly benefit of 10% of the credit card balance for accident, sickness and unemployment for up to 12 months per successful claim. The policy also provided life cover and in the unfortunate event of Mrs B's death would have cleared the credit card balance.

Our adjudicator has considered the case and is of the view that the complaint should be upheld. Briefly, she said that in her view NatWest:

- did not make it clear enough to Mrs B that the policy was optional and
- did not make it clear to Mrs B that the PPI policy and credit card were separate products

NatWest has disagreed with this view and has asked for an ombudsman to consider the case.

my provisional 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 taken into account the law and good industry practice at the time the policy was sold. After careful consideration, I think the issues in this case are the same as those set out in the note on our website, which explains our approach to complaints about the sale of PPI. Therefore, the overarching questions I need to consider are:

- whether NatWest gave Mrs B 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 and
- whether, in giving any advice, NatWest took adequate steps to ensure that the policy it recommended was suitable for Mrs B's needs

If there were shortcomings in the way in which NatWest sold the policy, I must also be satisfied that Mrs B is worse off as a result – in other words, that Mrs B would have done something different – ie not taken out the policy – if there had been no shortcomings.

Both parties agree that this was a non-advised sale. NatWest did not therefore need to ensure the policy was suitable for Mrs B's needs – that was essentially a decision she needed to make for herself. NatWest was however, responsible for ensuring that it gave Mrs B clear, fair and not misleading information on which she could base her decision to purchase the policy.

Mrs B has raised a number of complaint points. However, I am not going to consider whether Mrs B was provided with sufficient information relating to the terms, conditions, costs and benefits of the policy, as this question is not pertinent to the outcome of this complaint. This is because I have provisionally decided to uphold the complaint on the basis that NatWest did not make it clear to Mrs B that the PPI policy was optional.

Mrs B has complained that she did not know the policy was optional and that, had it been explained to her properly, she would not have bought the policy. In her testimony Mrs B has told us *'the application for the credit card was filled in for me...this was all done together as a package.'* Although not particularly detailed (which is not surprising considering that the PPI policy was sold to Mrs B in 2002), I do consider Mrs B's account genuine and honest. I am also mindful of Mrs B's testimony that she was not aware she could cancel the insurance until 2007.

NatWest has provided a copy of Mrs B's signed application form to this service. I have reviewed this form when reaching my conclusion. I accept there was some requirement on Mrs B to read the document that she was signing. However, given her understanding was that she was signing for a credit card (which she had agreed to take out) *'package'*, I consider it entirely possible that Mrs B did not notice the specifics of the tightly written, part of the application that requested the PPI.

Mrs B was not required to sign separately to indicate acceptance of the policy, and the layout of the form is such that the PPI appears amongst sections relating to employment and income details, an additional cardholder, and Air Miles registration. These sections are to be completed, so it is not unreasonable for Mrs B to have viewed the PPI section in the same way. If Mrs B had been required to sign for the PPI policy separately, this might have highlighted to her the policy was separate from her credit card and not something she had to have. I also think there is risk that, during a face to face meeting, she might not have been in a position to read the terms and conditions on the back of the application form in sufficient detail to counter this view.

As there was no requirement for her to sign separately that she wished to buy the policy, I consider it possible that she was not aware that the policy was an optional extra that had been added to the application form on her behalf. I also note that there were large crosses drawing Mrs B's attention to where she needed to sign and date the form.

There is no further evidence from the time of the sale to indicate what was discussed with Mrs B regard to the PPI policy. In their submissions NatWest say a copy of the terms and conditions would have been enclosed with the application of the sale and an insurance certificate which NatWest has confirmed would have been provided to Mrs B *after* the sale. It also says she could have cancelled the policy at any time. This would imply that the policy wasn't compulsory. However, I do not know whether these two documents were provided to Mrs B or even if they were, whether she would have read them, despite any recommendation to do so.

I have reviewed both documents and note that there is no explicit statement that the policy was optional and the cancellation terms are not given any significant prominence and appear on page 7 of a 9 page densely worded booklet. Even if I accept that Mrs B received the terms and conditions, the terms relating to cancellation are towards the end of the booklet, in small dense text, with no distinction. The document deals with a lot of detail about the many parts of the policy and I consider only the most careful of readers would have become aware of the cancellation terms after reading the document. However, as NatWest well knows the provision of information about a policy *after* the sale does not necessarily rectify failings on the part of the business at the point of the sale.

I accept that it is possible NatWest's advisor verbally pointed out that the PPI policy was optional equally I do not know whether it was presented to her as being part and parcel of the application for the credit card and that she had to have it by the representative. But there is no record of this. And the very fact that Mrs B went ahead and paid for a benefit she believed was not needed suggests to me that Mrs B was not likely to have been aware that the policy was optional.

I have also taken into account that reference is made to *'credit card repayment protection'* and *'payment protection'* on two monthly credit card statements I have been provided with. However, I am not persuaded that, even if Mrs B was in the habit of reading her monthly bank statements, this ought to have alerted her that PPI was optional.

I acknowledge that the PPI premiums appeared on Mrs B's credit card for a number of years as separate transactions. However, in my view, all this shows is that she was paying a separate amount

for the insurance each month to NatWest – it does not, in my view, illustrate that the policy was presented as optional. Furthermore, the lack of challenge until 2007 is consistent with Mrs B's testimony that she believed that the policy was part of the credit card package and not an optional product.

In their submissions NatWest say that despite any failing in the way the policy was sold to Mrs B it considers the policy was suitable for Mrs B given her circumstances and that it is plausible Mrs B would have gone ahead with the policy to protect this new financial liability. I do not agree and consider that if Mrs B had been aware of the optional nature of the policy she would not have taken it out. I say this because I am persuaded that Mrs B believed that she did not have a need for the policy at the time as she tells us that:

- she was in secure employment
- if she was off sick she would have been entitled to six months or more but less than twelve months full pay from her employer
- she had other means she could have used to rely upon to meet her repayments and
- she was in good health at the time of taking out the policy

Whilst these points are not conclusive, taken together, I am persuaded on a balance of probabilities in this case, that Mrs B would not have taken out the PPI and the policy was mis-sold.

In summary, the failure to highlight the optional nature of the policy is a significant failing, going to the heart of NatWest's relationship with Mrs B. It restricted her opportunity to exercise choice in a matter which should have been for her to decide and I am therefore justified in upholding Mrs B's complaint solely on this issue.

redress

Mrs B should be put back in the position she would have been in now if she had taken out the credit card without the PPI policy. I understand the PPI policy has been cancelled. NatWest should:

- A. Carry out a hypothetical reconstruction of the credit card account to find out what the current balance of the credit card account would have been if Mrs B had paid the same monthly payments, but the PPI policy had *not* been added to it. This will involve NatWest removing the PPI premiums, any interest that was charged on the premiums and any charges (and interest on those charges) that would not have applied if the PPI had not been added to the account. NatWest should then pay Mrs B the difference between the current balance and what the current balance would have been without PPI.
- B. Pay Mrs B interest at 8% per year simple[†] on any credit balance for any periods when the reconstructed account would have been in credit for the period it would have been in credit.
- C. Set out in writing to Mrs B how it has calculated the compensation in A and B.

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

Mrs B should refer back to NatWest 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.

my provisional decision

Having considered all the evidence provided to me, and reflecting on what is most likely to have happened in the circumstances, I am currently minded to uphold Mrs B's complaint and require National Westminster Bank Plc to pay Mrs B compensation in accordance with the calculation of redress I have set out above. I now invite both parties to provide further submissions they may wish to make, in writing by 1 July 2014, after which I will issue my final decision.

Sharon Kerrison
ombudsman