complaint and background

This complaint relates to the sale of two single premium Payment Protection Insurance ('PPI') policies, sold in conjunction with personal loans in May and November 2005. Mr B complains The Funding Corporation Limited ('TFC') mis-sold the policies.

Our adjudicator considered that TFC's recommendations that Mr B purchase PPI were not suitable for his needs and upheld the complaint. TFC do not agree with the adjudicator's conclusions, so the file has been referred to me for a final decision.

my 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 any relevant regulatory rules, the law, and good industry practice at the time the policies were sold.

It seems to me that the relevant considerations in this case are materially the same as those set out in the section of our website explaining how we deal with PPI complaints. The overarching questions I need to consider, therefore, are:

- Whether TFC gave Mr B information that was clear, fair and not misleading in order to put them in a position where he could make an informed choice about the insurance policies he was buying.

- Whether in giving any advice or recommendation, TFC took adequate steps to ensure that the products it recommended were suitable for Mr B's needs.

If there were any shortcomings in the way the policies were sold I need to decide if Mr B is worse off as a result. That is, would Mr B be in a different position to the position he finds himself in now if there had not been any shortcomings.

basis of sale

In this case, it is not in dispute that TFC provided Mr B with advice and a recommendation to purchase the PPI policies. This means that as well as having to provide Mr B with information about the policies that was clear, fair, and not misleading, TFC *also* had to ensure that its recommendations were suitable for his needs.

what was the purpose of the loans, and were the policies suitable?

An important consideration in assessing this complaint is the purpose of Mr B's lending. Mr B has told us that each of his two loans were for debt consolidation, while TFC have told us that the loans were for a holiday, and moving house respectively.

I have carefully reviewed the available information from the time each policy was sold. In my view, the primary purpose of each loan was for debt consolidation. In reaching that conclusion, I acknowledge that TFC's internal documentation for each sale is headed with a section 'Purpose for Loan' and that for the May sale the purpose was recorded as being 'holiday' and in November 'moving expenses'. However, upon closer examination, for the following reasons I conclude that the main purpose of both loans was debt consolidation:

- The May 2005 loan application states that Mr B was applying for a loan of £2,200 of which £1,270.58 was to consolidate another TFC lending from October 2004.
  I understand that the purpose of this previous loan was to consolidate credit card debt and provide funds for Christmas. Given nearly 58% of this May loan was to consolidate debt, in my view it is safe to conclude that the primary purpose was to consolidate debt, rather than to pay for a holiday.

- The November 2005 loan application states that Mr B was applying for a loan of £3,350 of which £2,350.63 was to consolidate the May 2005 loan. Given over 70% of this loan was advanced to repay other debt, in my view the main purpose of this loan was also debt consolidation.

In these circumstances, I am satisfied that the main purpose of both Mr B's loans was likely to have been consolidating other debt. It was therefore a real possibility at the point of each policy's sale that Mr B might take similar debt consolidation action again in the future – especially given the term of each loan and PPI was over three years, and that Mr B had a demonstrated history with TFC of taking out loans to consolidate other debts. Because of the likelihood of taking similar debt consolidation action in the future, the flexibility to rearrange his finances might have been important to Mr B.

Despite this need for flexibility, TFC recommended policies that, if cancelled after the first 30 days, provided less than pro rata refunds of the premiums. I consider this made the policies inflexible. It follows therefore that TFC's recommendations that Mr B purchase the policies were not suitable for his needs.

I consider it is unlikely that Mr B would have gone ahead with the purchases if TFC had informed his that the policies it was recommending may not be suitable for his because of their inflexibility.

successive sale

Before I go on to discuss appropriate compensation, it is worthwhile briefly setting out that the November 2005 PPI sale (the loan ending in 3594) was a 'successive sale.' What that means is that when Mr B took out this loan, instead of setting up a new loan running alongside the earlier loan, TFC set up a new loan, incorporating and settling the May 2005 loan (the loan ending in 2273).

This meant that the 37 month PPI policy purchased with the May loan was cancelled, with TFC selling Mr B a new PPI policy. Appropriate compensation will require consideration of the fact that the November 2005 lending may have incorporated the residual cost of the May 2005 PPI policy.

redress

I consider that the appropriate approach to fair compensation in this case is to require TFC to compensate Mr B by putting him (so far as is now practicable) in the position he would have been in, had he *not* taken out the policies. So in this case, TFC should:

A. For each loan work out and repay the extra monthly payments paid by Mr B because PPI was added to his loan and/or because any PPI was carried forward from a previous loan or loans by:

- calculating how much the loan payments would have been if Mr B had taken out the loan without PPI, and if PPI had not been carried over from a previous loan
- subtracting those amounts from what Mr B actually paid and paying him the difference
- paying Mr B interest (simple, not compound) on each of these amounts at the rate of 8% a year from the date each payment was made to the date the redress is paid†
- taking into account any PPI premium refunded to Mr B if the policies were cancelled or the value of any successful claim
- taking into account any residual PPI from the loan taken out in 2005.

B. Write to Mr B to set out the details of the calculations and amounts under (A).

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

Mr B should refer back to TFC if he 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

For the reasons I set out above, I determine this complaint in favour of Mr B, and require The Funding Corporation Limited to pay Mr B fair compensation with the calculation with the calculation of redress I set out above.

Jonathan Hanton
ombudsman