Financial Ombudsman Service

**complaint**

Mr J complained that Yorkshire Building Society ("YBS") mis-sold him a range of insurances when he took out a mortgage and further borrowing with them.

**background**

Our adjudicator explained why he felt that one type of insurance was mis-sold to Mr J. YBS did not agree with this and asked for an ombudsman to make a final decision on the case.

**my findings**

May I first apologise to both Mr J and YBS for the time that it has taken for this complaint to reach me.

I have now considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

First I have looked at the mortgage payment protection insurance ("MPPI") that Mr J bought in 2004.

Mr J has told us that he was told that he should take the MPPI to ensure he was granted the mortgage. He feels he was pressured into buying it.

YBS has told us that it did not recommend the policy to Mr J, simply told him about it for him to make his own mind up. I cannot be sure what was said to Mr J on the day, but the paperwork I have seen does appear to suggest that the cover was recommended to him. So I shall consider this as a recommended sale. This means that YBS had to recommend a policy that was suitable for Mr J's situation and also to tell him all about it.

I have seen the form that was completed for Mr J to buy the cover, and I can see that he had the choice of different levels of cover available to him. The box for accident and sickness cover only had been ticked, whereas the one above had been ticked and was then crossed out. This suggests that Mr J made an active choice about the type of cover he wanted to suit his circumstances.

There was also a box on the form which would have allowed Mr J to say why he did not want to buy the MPPI. This had been left blank. While it is not unusual for the forms to be filled in by the advisor, I can see that Mr J had signed the form, so I think he knew that he had a choice about taking the policy and decided to do so.

Having looked at the policy, I think it is unlikely that Mr J would have been disadvantaged by any of the conditions or limitations. Mr J has told us that he was in good health and regular employment. From the information he has given us, I think that he would have been able to make a successful claim on the policy if he had needed to. So from that point of view, I do not think YBS's recommendation was unsuitable.

I have then considered the cost of the policy. I understand that it would have cost £8.23 per month once a six months free-cover period had expired. This would have covered Mr J for accident or sickness, and I understand that Mr J would have been able to claim around £310 per month in benefit for up to 12 months. Mr J was taking on quite a large financial liability in the form of his first mortgage to buy a home and has told us that he did not have any savings or other illness-cover to call on. So I think that insurance to protect his repayments appears to have been a sensible precaution.

I can see that Mr J signed another form in 2005, and that was to increase the level of cover he was buying to £400 per month. Although the form doesn't show how much the increased cover was costing him, YBS has told us it was £10.63. As Mr J has not suggested that his circumstances had changed in any way, I think it is likely that he would have been told what the cost was before he signed the paperwork. So I think he was accepting of the cost and the increased level of cover he was buying.

I realise that this will disappoint Mr J, but I cannot safely decide that he didn't know he had a choice about buying the cover – or increasing his cover in 2005.

Overall, I think that the policy that YBS recommended to Mr J was suitable for his situation. I have seen nothing that makes me think that he would have decided not to buy the cover if he had been given more, or better, information about it. So I do not uphold Mr J's complaint about his MPPI.

I have then considered the buildings insurance that Mr J was sold.

I can see from the paperwork that buildings insurance was a condition of the mortgage offer. It is worth noting that a financial business is allowed to make buying insurance a condition of applying for credit if it considers it sensible to do so. But what we take a dim view of is when insurance *is* optional, but the business fails to make it clear to the customer that they have a choice. In this case, I can see that Mr J was made aware that buying buildings insurance was a requirement of securing the mortgage.

Mr J has said he was made to feel that he had to buy YBS's own cover. I appreciate that that is his best memory of what happened. But as our adjudicator pointed out, there is an option on the insurance needs paperwork to explain why no cover was sold. This suggests that Mr J would have been aware that he had a choice.

I wasn't there at the time, so cannot be certain. But, on balance, I think it is more likely than not that Mr J knew he had a choice about whether to buy YBS's own buildings insurance or whether to go elsewhere for it. So I do not uphold Mr J's complaint about being made to buy the YBS buildings insurance.

Finally I have looked at the level term assurance with critical illness cover that Mr J was sold alongside his mortgage. The intention of this type of cover is to pay off the full amount of the mortgage if Mr J were to die or to be ill for a very long time.

I cannot, of course, know how the cover was presented to Mr J during the meeting. And I accept that Mr J believes that he was made to take YBS's insurance, rather than find his own.

But I have no evidence to support his view. I can also see that the paperwork suggests that Mr J dealt directly with the insurer after the first referral from YBS. I think he would have realised that he could have declined the cover at that stage if he had thought it was compulsory to secure the mortgage.

I can see that the key elements of the insurance – including its purpose and monthly cost – were set out on the paperwork provided by the insurer to Mr J. So on balance, I think he had agreed to take the policy and knew what it offered him.

But I do agree with our adjudicator that a decreasing term assurance would have been more appropriate. As the amount of money that Mr J owed to YBS for the mortgage went down, he would not still have needed the full amount insured.

I appreciate that YBS has suggested that the difference in price between a decreasing and a level term assurance was minimal – perhaps around £2.50 per month. But that money was Mr J's to dispose of as he thought fit, so he should have been given that choice, rather than being sold the more expensive policy.

So I uphold this element of Mr J's complaint.

To summarise, I do not uphold Mr J's complaint about the sale of the MPPI or the buildings insurance. But I think that YBS should have sold him decreasing term life and critical illness cover to reflect the reducing mortgage debt.

**what the business should do to put things right**

I think it would be fair for YBS to pay back to Mr J the difference in the costs between a level and decreasing term assurance. If the policy is still active, YBS should, with Mr J's agreement, convert it to a decreasing term assurance. It should then

- pay back to Mr J the difference between what he paid each month for the level term assurance and what the decreasing term would have cost him from when the cover started to when the policy was cancelled or converted to decreasing term;

- add simple interest to each payment from when he paid it until the compensation is paid back to him. The rate of interest is 8% a year†.

† HM Revenue & Customs requires YBS to take tax from this interest. YBS must give Mr J a certificate showing how much tax it's taken off if he asks for one.

**my final decision**

For the reasons that I have set out above, I uphold a part of Mr J's complaint.
Yorkshire Building Society should compensate Mr J as described.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 9 April 2016.

Roxy Boyce
**ombudsman**