

complaint

Mr M says Premier Writers Ltd ('Premier Writers') mis-sold him a payment protection insurance ('PPI') policy.

background

Mr M applied for a loan with a finance company in late 2006. He bought a PPI policy at the same time. The finance company was acting for Premier Writers when it sold Mr M the PPI policy. So Premier Writers is responsible for how the policy was sold and must, therefore, answer this complaint.

Mr M borrowed £5,000 (including loan fees) and used his home as security for the loan. He used the money to pay off some mortgage arrears and to buy a replacement car. He took the loan over eight years. The policy would cover his loan payments if he wasn't able to work because of accident, illness or unemployment. Mr M paid £983 for the PPI policy with a single upfront premium that was added to the £5,000 loan. So, altogether, Mr M borrowed £5,983. The policy would have provided cover for five years, but Mr M could have ended up paying for the PPI policy for the full eight year term.

I issued my provisional decision in November 2015. I explained why I thought Mr M's complaint should be upheld. I also thought Premier Writers needed to pay Mr M £2,312.33 to put things right at that time.

I was concerned whether Mr M understood he had a choice about buying the PPI policy. The adviser told Mr M how much he'd be paying each month for the loan, but didn't explain this included the cost of the PPI policy. Also, the adviser told Mr M fees would be added to his loan, but that these would be included in his monthly payment and he'd have nothing more to pay. The fees were described as a broker fee, a legal and document fee and an insurance premium. Later, the adviser told Mr M about the main features of the PPI policy and checked whether he had any other way of paying the loan payments. The adviser didn't mention Mr M has a choice about buying the PPI policy and didn't ask Mr M whether he wanted the PPI policy, separate from the loan. The insurance premium was described as a fee, implying something Mr M would have to pay to get the loan, like the broker fee and the legal and document fee. So, I didn't think Mr M would have known he had a choice about buying the policy from what the adviser said.

I also looked at the documents Premier Writers said would've been sent to Mr M after the telephone call. And, while they say the PPI policy is optional, I think this could've been easily overlooked by Mr M, especially as the adviser hadn't told him he had a choice about taking it out. So I think Mr M would still have thought what the adviser had led him to believe, that the PPI policy was part of the loan deal.

I then looked at how Premier Writers should put things right for Mr M. The way the PPI policy was added to Mr M's main loan meant he borrowed more and paid more each month than he should have. So I thought he needed to get that money back.

In response to my provisional decision, Premier Writers said:

- It disagrees with my analysis, which is seemingly based on a lack of knowledge of how this lending market worked and a thin understanding of the Consumer Credit Act regulations that governed the loan sale.

- It's unacceptable to expect it to pay 8% interest for the time it's taken the Financial Ombudsman Service to deal with the case – over three years.
- I've dismissed the fact the fees were reduced simply because I can't find reference to them in the documentation. As the fees related to the loan, there wouldn't be reference to them in the insurance documentation. It has provided a letter from the lender confirming the reductions made to the loan fees because Mr M took out the PPI policy. If it followed my calculations, Mr M would be better off, rather than being put back in the position he would be in now if he hadn't taken out the PPI policy. If he hadn't bought the PPI policy, he would've paid an extra £610 to the broker. This should be deducted from the PPI premium, which then affects the loan interest paid. The fact is that the PPI policy reduced the borrowing for the fees, benefitting Mr M. This should be reflected in the compensation calculation.
- It doesn't understand my point about 'savings'. It is simply pointing out what the cost would've been without the insurance, as required by the FCA. I've assumed incorrectly that the premium increased the total borrowed by £983 to £6,443. This is not correct, as demonstrated in its own calculations.
- The fact the loan ran to term shows Mr M will benefit from the shorter loan term made possible by buying the PPI policy. The total amount payable on the loan with the PPI policy is less than it would've been without PPI. So there's no financial detriment. In fact, Mr M has gained financially by having the PPI policy.
- Any award would mean Mr M would gain significantly from my decision, rather than being put back in the situation he would be in now if he hadn't bought the PPI policy.

Mr M says all the points he made have been covered and he has no extra information to add.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We've set out our general approach to complaints about the sale of PPI on our website and I've taken this, and everything else that's relevant, into account in deciding Mr M's case.

I still think Premier Writers mis-sold PPI to Mr M and it needs to do something to put things right.

I understand Premier Writers' point, but I didn't uphold Mr M's complaint because of the lending market and the Consumer Credit Act. I think Premier Writers mis-sold the policy because it was not made clear to Mr M he had a choice about taking it out.

Premier Writers has complained it shouldn't have to pay 8% per year simple interest for the time this complaint has been with this service – over three years. It says the case should've been finished in four months. But there were delays when Premier Writers applied to go into liquidation and stopped engaging with this service. And the principles in this decision aren't new – Premier Writers had the opportunity to settle this case much earlier. Mr M needs to be compensated for the period of time he's been out of pocket, which he still is. So Premier Writers needs to pay 8% per year simple interest to the date he gets paid.

Premier Writers says the full broker fee Mr M needed to pay was discounted because he bought the PPI policy. Premier Writers thinks this should be reflected in the calculations when working out how much it needs to pay to put things right.

I explained in my provisional decision that I couldn't find any mention of the discount to back up what Premier Writers said. Premier Writers has now asked the finance company to say Mr M got a discount. I've looked at the letter from the finance company and it now says the amount Mr M was charged to set up his loan was reduced by £250 because he bought PPI.

It also said it's not surprising there was no mention of the lender discount in the insurance documentation. While this may be the case, if Mr M's purchase of the PPI policy reduced the fees payable to the lender *and* the term of the loan he took out, then I would expect this to be set out in the information given to Mr M. Otherwise, he wouldn't be able to make an informed decision about taking out the PPI policy (or the loan).

I've put more weight on the evidence from the time Mr M bought the policy rather than the evidence provided by the finance company in response to the request from Premier Writers. I can see no mention of a discount to the broker fee or a reduction in the term of the loans during the sales process. So, I don't know there really was a discount on the broker fee Mr M had to pay to set up the loan or a reduction in the term of the loan because he bought the PPI policy.

Even if I did accept there was a discount on the broker fee and the term of the loan was reduced, and Mr M would've needed to pay more each month without that discount and term reduction (and so has saved some money), I also need consider if it's fair for Premier Writers to take any saving into account when working out how much it needs to pay him.

For me to be able to say Premier Writers could deduct that saving from the amount it needs to pay Mr M, it would need to show me Mr M knew he was making a saving, that he'd kept those savings and that he has them readily available, following the principle set out by the Court of Appeal in *R v ICS ex parte Bowden* [1994].

In my provisional decision, I said that, even if I accepted Mr M did get a discount, I didn't think he would've realised he was making a saving. As the discount wasn't mentioned in the sales process, I don't think Mr M knew anything about it. I also think it's likely Mr M spent any savings as part of his everyday spending. This means Mr M wouldn't be left with those savings, nor could he access them. So, while I've considered Premier Writers' calculation that takes the savings into account, it hasn't shown me Mr M knew he was making a saving, that he'd kept those savings or that he has them readily available. Following what I've said earlier, this means I don't think Premier Writers can take the savings into account when working out how much it needs to pay Mr T.

Finally, I don't agree with Premier Writers that Mr M is left better off if these savings aren't deducted from what it should pay to put things right. And I don't agree that this compensation calculation means Mr M will be better off rather than being put back in the position he would be in now if he hadn't bought the PPI policy.

Overall, I think Mr M has lost out and Premier Writers needs to put things right.

what Premier Writers Ltd should do to put things right

I think Premier Writers should pay £2,330.13 to Mr M to put him in the position he would be in now if he'd taken his loan without PPI.

Because of the way the PPI policy was added to the loan, it meant the loan was for more than it should've been. It also meant Mr M paid more than he should have each month. So he needs to get that money back.

I've worked out how much Premier Writers Ltd should pay by calculating:

- The difference between what Mr M paid each month on the loan and what he would've paid each month without PPI

I've worked this out to be £1,651.20 (96 x £17.20) [ii]

- Simple interest calculated on a yearly basis on the extra Mr M paid from the date of each payment up until today (the rate of interest is 8% a year) [iii].

I've worked this out to be £678.93. But HM Revenue & Customs requires Premier Writers to deduct tax at the basic rate from any simple interest payments [iii].

my final decision

For the reasons set out above, I uphold Mr M's complaint and tell Premier Writers Ltd to follow the instructions on putting things right as I've set out.

The total Premier Writers Ltd should pay before tax is £2,330.13 as it stands at the date of this final decision – and after tax that's £2,194.35 to Mr M with £135.78 passed to HM Revenue & Customs.

If Mr M accepts this final decision before the deadline noted below, it will be legally binding on both sides. Premier Writers Ltd must then pay Mr M promptly and no later than 28 days after the date of this decision. After this time, the addition of simple interest will resume at £0.51 per day before tax – and after tax that's £0.41 to Mr M with £0.10 passed to HM Revenue & Customs.

I'd like to remind both sides that the law establishing the Financial Ombudsman Service – the Financial Services and Markets Act 2000 (FSMA 2000) – made an ombudsman's decision legally enforceable in court.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 February 2016.

Chloe Wooles
ombudsman

notes:

[i] Mr M borrowed an extra £983 to pay the PPI Premium. He was given a *statement of price* that shows if he kept paying his loan over the full nine years, he'd pay £668.20 in interest on the extra he borrowed. It also shows he needed to pay £17.20 extra each month to cover the cost of the PPI.

The loan started in November 2006 and Mr M repaid it in full in November 2014. I've assumed Mr M the first payment to the loan in December 2006, a month after it started. This means he made a total of 96 payments before paying off the loan. I've assumed the interest rate stayed the same throughout.

[ii] Simple interest is calculated by multiplying each payment amount (£17.20 every month for 96 months beginning December 2006) by the daily interest rate (8%/365) and by the number of days between when payment was paid and the day it is paid back.

[iii] The total Premier Writers Ltd should pay before tax is £2,330.13 – and after tax that's £2,194.35 to Mr M with £135.78 passed to HM Revenue & Customs.