

## **complaint**

Mr B's complaint is about a payment protection insurance (PPI) policy he was sold by Advantage Finance Ltd (Advantage) in July 2008.

Mr B also complained about other insurance policies and warranties he was sold at the same time. In addition Mr B complained about charges that were added to his loan, and about an unemployment claim he made in 2009 which was declined by the policy insurer. My decision only deals with the sale of the PPI policy. These other issues have been, or are being, dealt with separately.

## **background**

In July 2008 Mr B took out a hire purchase agreement to buy a car. Mr B borrowed £4,000 over a term of 48 months. At the same time he was sold a single premium PPI policy. The premium was £1,533.91 and this was added to the loan so it would attract interest.

Mr B became unwell and in August 2009 he lost his job. Mr B told us he tried to make a claim on the PPI policy but it was declined by the insurer. The loan fell into arrears and the car was repossessed.

My understanding is that the amount outstanding on the loan currently stands at over £6,000.

In 2010 Mr B complained to Advantage about the way the PPI policy was sold to him. Advantage didn't agree that the policy had been mis-sold, so Mr B asked us to step in.

An adjudicator from this service recommended that Mr B's complaint should be upheld. Advantage disagreed with the adjudicator's findings and asked for an ombudsman to review the complaint.

In the meantime I see the policy insurer agreed to look again at Mr B's unemployment claim from 2009. My understanding is the insurer agreed to pay the claim and has paid Mr B £2,874 directly to him.

In December 2015 I issued my provisional findings on Mr B's complaint. I invited both parties to comment and send any additional evidence they wanted me to consider

In my provisional findings I explained why I intended to uphold Mr B's complaint. I thought Mr B had most likely been diagnosed with a medical condition at the time he was sold the policy. The policy itself excluded claims for sickness that were caused by a pre-existing medical condition. I didn't think Advantage did enough to draw this important exclusion to Mr B's attention. And I don't think he'd have bought the policy if this significant exclusion had been clearly highlighted to him.

I also set out what Advantage needed to do to put things right. I said Advantage needed to:

- Change the amount Mr B has left to pay on the loan to what it would've been without PPI.
- Work out and pay Mr B the difference between what he paid each month on the loan and what he would've paid each month without PPI.
- Add simple interest to the extra amount Mr B paid each month from when he paid it until he gets it back. The rate of interest is 8% a year. <sup>†</sup>

I also said Advantage could deduct £2,874 from the amount it owes Mr B. This is because Mr B could never have claimed that amount from the insurer if Advantage hadn't sold him the policy.

Both Advantage and Mr B's representatives have replied to my provisional decision.

Advantage disagrees with how I've said it should put things right. Advantage has said:

Mr B has made an unemployment claim on the policy and the policy insurer has paid Mr B £2,874 for this claim. Advantage says this should be used to reduce the loan arrears rather than paid direct to Mr B. Advantage says it's unfair Mr B should receive this money for the claim when he owes £6,000 on the loan.

Mr B's representatives have also been in touch. They say Mr B would never have taken out the loan at all if he'd have known the PPI policy didn't properly protect him. They also say Advantage has previously offered to settle the loan for £1,500. So Mr B's representatives have told me that Mr B will pay £1,500 from the money Mr B received from the insurer, as long as Advantage agree to accept this amount in full and final settlement of Mr B's debt.

Mr B's representatives then say that *all* the compensation due to Mr B for the mis-sale of the PPI should be paid directly to him.

### **my findings**

I've again 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 into account in deciding Mr B's case.

#### *would Mr B have taken out the loan without PPI?*

I've thought about whether Mr B would've taken out the loan if he'd been told the PPI wasn't suitable for him because of his medical history. I've taken into account what Mr B has told us. But as I said in my provisional findings, Mr B made it clear in his original complaint questionnaire that he'd found a car he wanted to buy and then approached Advantage for the finance. I still think it's likely that the purchase of the car was important to Mr B at the time and that he would likely have gone ahead and taken out the loan even if he hadn't been sold PPI.

#### *directing the insurer to pay the claim money direct to Advantage*

I've thought about what Advantage has said. It's suggested that I should direct the insurer to pay the claim directly to the loan. But this complaint is about the mis-selling of the policy and Mr B's complaint is about Advantage. So I wouldn't (and couldn't) direct the insurer to do as

Advantage has suggested. But I do think it wouldn't be fair for Mr B to receive all the compensation for the mis-sale of the PPI policy *and at the same time* receive the money for his claim. After all if the PPI policy hadn't been sold then Mr B wouldn't have been able to make the claim.

This is why I said in my provisional decision that Advantage can deduct up to £2,874 from what it owes Mr B for the mis-sale of the policy.

In its reply to my provisional decision I didn't think it was clear that Advantage understood that it not only owed Mr B what he had already paid for the PPI (plus some interest) but that it also had to remove the PPI premium from what he still owed it.

Advantage needs to look at how much of the outstanding balance is due to the PPI policy being added to the loan. I've looked at the loan statement and what Mr B has paid, in order to give some guide to what I expect to see happen when Advantage calculates how much compensation it needs to pay Mr B.

Looking at the loan statement I can't see Mr B ever received any rebate from the policy being cancelled early. And according to the loan statement Mr B only ever made repayments for about one year. *So most of the single premium Mr B was charged for the policy must still be included in the outstanding balance of the loan.* Advantage needs to work out how much of the outstanding balance of the loan is due to the PPI premium being added to the total borrowing at the outset.

I can see the total cost of the PPI at the outset including interest was £2,576.97 (this was stated in Advantage's letter to Mr B's representative dated 3 November 2010).

And I can see Advantage has told us that the *"The actual amount (Mr B) paid in PPI payments including interest and a further 8% amounts to £886.03"*. This looks about right and it means Mr B most likely has paid only around £500 off the total cost of the PPI which was £2,576.97. This means around £2,076.97 of the outstanding debt is caused by the PPI premium.

So if Mr B hadn't received money from a claim from the insurer I'd be telling Advantage to reduce Mr B's outstanding loan by around £2,076.97 to remove the cost of the PPI.

And I'd *also* be telling Advantage to pay Mr B the extra he's *already* paid because of the PPI policy. And to pay him 8% simple interest on the extra he paid to compensate him for the time he's been out of pocket. In response to my provisional findings, as I've said earlier, Advantage worked out, including the 8% interest Mr B should get a total of £886.03. I'd normally direct Advantage to pay this figure direct to Mr B after bringing the 8% interest up to date.

So if Mr B *hadn't* received £2,874 from the insurer I'd direct Advantage to reduce Mr B's outstanding debt by around £2,076.97 *and* pay him around £886.03 directly. Added together these two sums total £2,963.00.

But the aim of the compensation is to return Mr B to the position he'd be in if the PPI hadn't been sold the PPI. And if he hadn't been sold the PPI then he wouldn't have been able to make a claim on the policy. So I think it's fair that Advantage can take off what Mr B received from the insurer (£2,874) from what it owes him in total (around £2,963.00).

And it's clear from this that when Advantage updates the 8% interest and deducts the claim money then I'd expect one to almost cancel out the other leaving the level of outstanding debt unchanged and Advantage having to pay Mr B only a small amount of compensation.

*funds from the repossessed car*

Advantage may argue that the loan statement shows when Mr B's car was repossessed and sold it reduced the balance on his account by £3,080. And it might say that some of this would've gone towards reducing that part of the balance caused by the PPI premium. But I don't think this would be fair as the main purpose of the loan was to buy the car, so the proceeds from the repossession would've been used to reduce the main loan and not the amount borrowed to buy the PPI.

*Mr B's proposal*

Mr B's representatives have proposed a different solution. They've said Mr B is prepared to pay Advantage £1,500 from the money he received from the insurer in full and final settlement of the outstanding loan. But they've also said that *all* the compensation from the mis-sold PPI should then be paid direct to Mr B. For the reasons I've set out above I don't think that's fair because Advantage can reduce the compensation it owes Mr B by the amount he received from the insurer.

So in summary, I've thought about what both parties have said in response to my provisional findings. But I've not been persuaded to change them.

*In practice when Advantage deducts what Mr B received for the insurance claim from the money it owes him, I expect to see no change in the outstanding balance of the loan with Advantage having to pay Mr B only a small amount of compensation direct.*

I can see that over the past few years Advantage has made Mr B offers to settle the loan for a reduced sum. I've seen one offer to settle for £2,500 and Mr B's representatives have said another offer was made to settle for £1,500. In my view it's in the interest of everybody to reach an agreement to settle the loan. So once Advantage has done as I've directed it to do in this decision, I'd urge Mr B's representatives and Advantage to get in contact to agree a settlement figure for the loan.

**putting things right – what Advantage needs to do**

Work out the difference between the amount Mr B has left to pay on the loan and what it would've been without PPI. (I estimate this amount to be around £2,076.97).

Work out the difference between what Mr B paid on the loan and what he would've paid without PPI. And add simple interest to the extra amount Mr B paid from when he paid it up to the calculation date. The rate of interest is 8% a year.<sup>†</sup> (Advantage told us that in December 2015 this amount was £886.03 which looks correct to me).

Advantage should add together the two figures above which I expect to come to around £2,963.00. This is what it owes Mr B for mis-selling him the PPI policy.

Mr B made a successful retrospective claim under the PPI policy and was paid £2,874 from the insurer. Advantage can deduct this amount from what it owes him.

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

**my final decision**

For the reasons set out above I uphold Mr B's complaint and direct Advantage Finance Ltd to pay Mr B compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 8 April 2016.

Steve Thomas  
**ombudsman**