

complaint

Mr F says ACF Car Finance Limited (ACF) mis-sold him a payment protection insurance (PPI) policy with a loan.

background

In 2008 Mr F took out a loan through ACF to buy a car. ACF also advised him to buy PPI. Mr F borrowed extra to pay for the policy, which was added to his loan and repaid – with interest – over the term.

Our adjudicator upheld the complaint. He didn't think ACF had properly sold the PPI to Mr F, because Mr F's told us he had an existing health problem when he bought it. And the policy wouldn't have let him claim for that.

ACF disagreed. It said its adviser would've told Mr F that the policy didn't cover his existing health problem. But it argued that the policy was still suitable for Mr F because he was borrowing a lot of money against his car and didn't have any other ways to pay his loan.

ACF also said the policy would've covered Mr F for other health problems, or if he lost his job. And it said the policy might've also covered his existing health problem if it didn't come back within the first two years.

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 into account in deciding Mr F's case.

I've decided to uphold this complaint.

ACF advised Mr F to buy the policy. So it had to take enough steps to make sure it was right for his needs. ACF says the paperwork from the sale shows that the policy was right for Mr F and that it told him about the exclusion. I don't agree. I'm not satisfied ACF did everything it should've done when it advised Mr F to buy the policy.

I've looked at the demands and needs form and I can see there's a tick in a box next to the statement "*You understand that you cannot claim for any pre-existing medical conditions*". But this was only one of several statements in this part of the form. So I'm not sure ACF clearly drew Mr F's attention to it. And there's no detailed information in the form to show how much explanation (if any) ACF gave Mr F about this exclusion.

The customer declaration also had a row of boxes Mr F had to put his initials in, again next to a long list of statements. One of the statements said that Mr F had read and been given the policy summary. But again there was a lot of information for Mr F to take in on this form, and this particular statement was on the second page and covered several different pieces of information. So again I can't be sure how much attention Mr F was really able to give to it at the time.

There's also nothing in any of this paperwork to show me that ACF asked Mr F any questions about his health, or tried to find out whether this exclusion might actually affect him, and to what extent. And it's clear that the exclusion did affect him.

The policy didn't cover life or sickness claims resulting from pre-existing medical conditions. And it also excluded claims resulting from chronic conditions. The condition Mr F's told us he had seems to be chronic – because it continues indefinitely and is managed rather than cured. So Mr F's existing health problem seems to be caught by both parts of this exclusion.

And the policy didn't just stop Mr F claiming for his condition. It also stopped him claiming for anything arising *directly or indirectly* from it. So it wouldn't let him claim for anything the insurer thought might be linked to his existing condition. That meant the exclusion was wider than ACF described it on the demands and needs form (assuming Mr F saw it).

I don't think ACF's argument that Mr F could claim if his condition didn't come back for two years is right either. As a chronic condition, it would always be excluded.

ACF had to highlight the significant exclusions and limitations to Mr F. It says Mr F had the policy summary, and he may well have done. But he'd have had to read through to page two of the summary to find out he wasn't covered. I don't think this was enough to bring it to his attention.

And, more importantly, as it advised him to buy the policy, ACF had to make sure it was right for Mr F. It wasn't enough to just refer Mr F to some generic statements and the printed information and expect him to work out for himself how his health problem would affect his ability to bring a claim. ACF also had to think about whether the exclusion, along with his circumstances, meant the policy wasn't right for Mr F.

It's true that Mr F would still have been covered if he lost his job, or if he was off sick with something not linked to his existing health problem. But the nature of his condition meant it was much more likely that he would expect to need to claim for sickness resulting directly or indirectly from it. This meant a large section of the cover under the policy might not have been available to him. So it was worth a lot less to him.

I've taken into account that Mr F's loan was secured against the car with a bill of sale. And I've also taken into account that he didn't have any other cover for his loan payments. But weighing all that up with the cost of the policy and the limits to the cover it gave him, I think the policy would've been less important to Mr F if he'd known it wouldn't cover him for his existing condition.

I don't think Mr F would've bought the policy if not for ACF's unsuitable recommendation. This means he's lost out as a result of what ACF did wrong, and so it should put things right.

what ACF should do to put things right

Mr F borrowed extra to pay for the PPI, so his loan was bigger than it should've been and he paid more than he should've each month. So Mr F needs to get back the extra he's paid.

So, ACF should:

- Work out and pay Mr F 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 F paid each month from when he paid it until he gets it back. The rate of interest is 8% a year[†].
- If Mr F made a successful claim under the PPI policy, ACF can take off what he got for the claim from the amount it owes him.

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

my final decision

I uphold this complaint and I direct ACF Car Finance Limited to pay Mr F the compensation I've described.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 9 November 2015.

Dawn Griffiths
ombudsman