

complaint

Mr F complains about a monthly mortgage payment protection insurance ("MPPI") policy sold to him in December 1996. The MPPI was sold by Nationwide Building Society ("Nationwide") via an intermediary. Mr F complains that the MPPI was mis-sold to him.

background

Nationwide did not uphold Mr F's complaint. Upon bringing his complaint to this service, the adjudicator in this case also did not uphold his complaint. Mr F has now asked for an ombudsman to review his case and to provide a final decision upon this matter.

my findings

I have included only a brief summary of the complaint above, but I have considered all of the available evidence and arguments from the outset in order to decide what is fair and reasonable in the circumstances. In doing so, I have also taken into account the law and good industry practice at the time the policy was sold.

The key questions I will consider in this case are as follows:

- Whether Nationwide gave Mr F information that was clear, fair and not misleading in order to put him in a position where he could make an informed choice about the insurance he was buying.
- If Nationwide was giving advice or making a recommendation, whether it took adequate steps to ensure the product being recommended was suitable for Mr F's needs.

If there were shortcomings in the way in which Mr F was sold the policy, I will also consider whether he is worse off as a result; that is, would he have done something differently – such as not taken out the policy – if there had been no shortcomings.

I have decided to not uphold Mr F's complaint and I explain why below.

basis of sale?

It is clear from the documentary evidence from this sale that Mr F completed his mortgage application via an intermediary. Nationwide agrees about the sales channel being conducted through an intermediary on an information only basis. I am satisfied this transaction was conducted on an information only basis. I can see that a mortgage application form was completed and this stresses that Mr F wanted the MPPI and that a Payment Guard application was to follow. I have seen no evidence to suggest that the MPPI was recommended to Mr F such as assessment of his demand and needs and despite Mr F telling me that he was advised by the intermediary I cannot safely say what was discussed with him. On balance I am persuaded this was an information only sale.

As such Nationwide had to ensure that the information it gave to Mr F about the MPPI he was purchasing was clear and fair. It was for Mr F – not Nationwide – to ensure that the product was suitable for his circumstances at the time based upon the information he received from Nationwide.

did Mr F have a clear choice about the MPPI he selected?

Mr F says that the MPPI was sold as being compulsory if he wanted to secure the mortgage. He tells me that the seller told him he had to have the MPPI as he was the sole person responsible for the mortgage repayments. I am not persuaded the evidence supports his recollections and I shall explain why. A bold section of the mortgage application form asked whether Mr F wanted MPPI to protect his mortgage. There were “yes” and “no” options. A tick has been placed in the “yes” box and the application form has been endorsed with a handwritten note explaining “*Payment guard application to follow*”. I note that this mortgage application form was completed in the middle of December 1996.

Having expressed an interest in MPPI via the mortgage application form, Mr F was then provided with a MPPI application form. I can see this was completed almost five months later in May 1997. Mr F had to read the MPPI leaflet enclosed, and (as directed by the form) decide whether the MPPI was suitable for his needs. I cannot say who completed this form but it suggests to me that, on balance, Mr F clearly wanted to protect his mortgage repayments. He selected a monthly benefit of £200 with a 12 month benefit period and excess of 30 days to provide cover for unemployment only. Conscious choices have been made by Mr F in tailoring his insurance requirements and he has signed to accept the MPPI. I understand that Mr F tells me he felt pressured into purchasing the MPPI and I can see that there is a risk that some customers might be put under pressure (whether intentionally or not) to buy such policies – and I do not doubt that his submissions represent his honest recollections of what took place. However, I cannot safely say on the limited evidence and testimony available that Mr F was pressurised into purchasing the MPPI. The documentation provided choices to select or decline the MPPI and Mr F had time to consider the MPPI away from the point of sale.

Nowhere on the mortgage application form or the MPPI application form is it stated that the MPPI is compulsory so as to secure the mortgage. I am satisfied that Nationwide has made the optional nature of the MPPI clear to Mr F and that he expressed a desire in being protected and then duly completed the MPPI application making active choices and selections. His complaint does not succeed on this basis.

was the information presented in a clear and fair way?

As a non-advised sale, I must assess whether Nationwide provided information to Mr F in a clear and fair way. Nationwide say that Mr F would have been provided with all of the documentation during the sale including a policy leaflet. However, I have seen no substantive evidence to suggest that this indeed occurred. I cannot safely say that Mr F received the MPPI leaflet or that any of the policy’s significant features and terms were discussed with him. I can see from the documentation Mr F has completed – such as the mortgage application and the MPPI application – that none of the policy’s costs and benefits are described to a consumer. As such, there is a real risk of information failings in this case which I cannot overlook. However, before I can uphold a complaint, I need to be able to say that, on a balance of probabilities, such failings have caused a consumer detriment. That is to say, in Mr F’s case, he would not have opted for this MPPI if the information was presented to him fairly and transparently.

On balance, I cannot say that Mr F would have done anything different even if the information was presented in a clear and fair way. I say this because:

- Mr F was eligible for the policy and has told me that he was healthy at the time of sale. Therefore, he would not have been caught by any terms or conditions affecting those with pre-existing medical conditions for example, or those who were self-employed;
- The policy provided a monthly benefit in the event of unemployment for a maximum period of up to 12 months, after which a re-qualification period was required. The cost of the cover was £8.22. I am satisfied that the cost of cover was competitive in the market at the time and it was for Mr F to decide in a non-advised sale whether this was affordable for him. Considering he proceeded with the MPPI I cannot say that it was unaffordable for him at the time;
- Mr F has told me that he was entitled to sick pay from his workplace at the time and that he did not have any savings or other means of meeting his repayments. I have not been told the amount of sick pay he was entitled to. However, as this was a non-advised sale, it was for Mr F to decide if he required protection and if the insurance met his needs. Even with such entitlements already in place for Mr F it seems to me that he may well have struggled in the event of being unable to work. I say this as he was the only person responsible for repaying the mortgage at the time of this sale. In this instance I am satisfied that the MPPI would have provided some welcome breathing space if Mr F was unable to work. The MPPI still provides benefits which I cannot say he was not interested in. Even if the benefits of the MPPI were disclosed correctly, I am satisfied that Mr F's circumstances suggested a need for protection and that he would still have been interested in the product.

So, even if there were information failings in this case, I cannot say that Mr F would have done something different if the information had been provided to him in a fair and transparent manner. The information, if it had been disclosed correctly, would have simply revealed to him that the MPPI provided him with affordable benefits and protection for a serious financial commitment and for which he did not have cover in place. Given he has expressed a clear wish to have MPPI, and that Mr F has then gone on to select a level and type of cover, I cannot say that the failings have caused Mr F any detriment.

It is just as likely, in my findings, that he wanted the cover; has chosen on that basis and that despite any information failings that may have existed, the resultant sale has not caused him any detriment.

I do not uphold this complaint.

my final decision

I do not uphold this complaint and I make no award against Nationwide Building Society.

Daniel Lucas
ombudsman