

complaint

This complaint is about a single premium payment protection insurance ("PPI") policy, sold alongside a hire purchase agreement in 2007. Mr C says that Letchworth Autoway Centre Limited ("Letchworth") mis-sold the policy.

background

The background to this complaint is set out in my provisional decision. A copy of that decision is attached and forms part of my final decision.

I explained in my provisional decision that I was intending to uphold Mr C's complaint. That was because I thought Letchworth didn't do enough to make sure that the policy was right for him. Mr C had a pre-existing medical condition and the policy wouldn't have covered him for it. I also didn't think Letchworth had given Mr C clear information about the exclusion.

my findings

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

I've decided to uphold Mr C's complaint. Mr C responded to my provisional decision but didn't have anything to add. Letchworth also responded and made some additional points which I'll talk about below.

I've looked at all the points raised by Letchworth but I'm still going to uphold this complaint. That's because:

- I think Mr C was suffering from a pre-existing medical condition at the time of the sale. And, from what he has told us, he was still receiving treatment when he took out PPI;
- I don't think that Letchworth did enough to make sure that the policy was right for Mr C for the reasons I set out in my provisional decision;
- I think it's unlikely that the exclusions were drawn to Mr C's attention. Even if Mr C was given the leaflets I don't think that the exclusions would have been obvious to him. Mr C would've needed to look at the documents in some detail to work out whether he was affected by the policy terms relating to pre-existing medical conditions. And it was also Letchworth's responsibility to point them out to Mr C;
- Letchworth has also said that if Mr C remained symptom free for 24 months before making a claim the policy would have covered him. But it seems Mr C was receiving on-going treatment and medication over a long time. So I don't think that the policy would've provided him with certainty that he'd be covered by it;
- Letchworth has expressed some concerns about calculating the correct figure of redress. It is responsible for contacting the lender to ensure that fair compensation is calculated in accordance with the calculation of redress I have set out below.

fair compensation

I understand from the lender that the PPI policy and the loan ran full term. So Letchworth should:

- A. work out and repay the extra monthly payments paid by Mr C because PPI was added to the loan by:
- calculating how much the loan payments would have been if Mr C had taken out the loan without PPI
 - subtracting those amounts from what Mr C actually paid and paying him the difference
 - paying Mr C interest (simple, not compound) on each of these amounts at the rate of 8% a year from the date each payment was made to the date the redress is paid[†] taking into account the value of any successful claim.
- B. Write to Mr C to set out the details of the calculations and amounts under (A).

[†] I understand Letchworth is required to deduct basic rate tax from this part of the compensation. Whether Mr C needs to take any further action will depend on his financial circumstances. More information about the tax position can be found on our website.

Mr C should refer back to Letchworth if he is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

my final decision

For the reasons I've explained my final decision is that I uphold Mr C's complaint. I direct Letchworth Autoway Centre Limited to pay him the fair compensation I've outlined above.

Anna Wilshaw
ombudsman

COPY OF PROVISIONAL DECISION

complaint

This complaint concerns a single premium payment protection insurance ("PPI") policy, sold alongside a hire purchase agreement in 2007. Mr C says that Letchworth Autoway Centre Limited ("Letchworth") mis-sold the policy.

The policy and the hire purchase agreement were taken out in Mr C's name although it appears that his wife may have been present at the point of sale. This is relevant for reasons I will explain in due course.

Mr C raised a separate issue in relation to this policy but my decision relates to the mis-sale of the policy only.

background

Our adjudicator considered Mr C's complaint and recommended that it was upheld. Letchworth does not agree and so the case has been passed to me to make a final decision.

my findings

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 taken into account any relevant regulatory rules, the law and good industry practice at the time the policy was sold. I think the relevant considerations in this case are the same as those set out in our well-established approach to complaints about the sale of PPI, which is published on our website.

The key questions I need to consider therefore are:

- if Letchworth gave any advice or recommendation did it take adequate steps to ensure the product it recommended was suitable for Mr C's needs; and
- did Letchworth give Mr C information that was clear, fair and not misleading so he was put in a position where he could make an informed choice about the insurance he was buying.

If Letchworth did something wrong when selling the policy, I then need to consider whether Mr C would have acted differently if it had not done so.

how was the policy sold?

Mr C says that he purchased the policy from Letchworth during a meeting. I have looked at the available evidence and the evidence suggests to me that is how the policy was sold. For example, I can see that Mr C's wife and the sales advisor signed the sales documentation on the same day. So I am satisfied that the policy was sold in a meeting as Mr C describes.

did Letchworth advise Mr C to take out the policy?

Letchworth says, in summary, that the policy was not mis-sold because Mr C has not demonstrated that the policy was not needed, wanted or asked for. I have set out our approach to the mis-sale of PPI above and the key questions that I need to consider.

I have seen a statement of demands and needs which appears to have Mr C's wife's name and signature on it. This document was also signed by the sales advisor on the same date. The registration number on the statement of demands and needs is the same registration number on the hire purchase agreement so I am satisfied that it relates to the same sale.

It is unclear why the document has Mrs C's details and not Mr C's. I note that on the document the advisor has written "recommended and taken" underneath the section dealing with PPI. It does not appear that there is a demands and needs statement completed by Mr C. But, ultimately, it seems Mr C took out the agreement and the PPI in his name only. The evidence in the existing demands and needs statement suggests to me that it is most likely that the policy was recommended to Mr C during the sales process.

As I think Letchworth recommended the policy it needed to take adequate steps to ensure the policy was suitable for Mr C and ensure that he had enough information about the policy in order to make an informed decision about whether to take it out.

was the policy suitable for Mr C?

In this case I don't think that Letchworth took adequate steps to assess the suitability of the PPI for Mr C. Mr C says that he had a pre-existing medical condition which was a chronic condition. He says that a few years before he took out the policy he had surgery. And he also says he had on-going treatment, including check-ups and taking regular medication. It seems that the check-ups were on-going around the time he took out the policy and that he continued to seek treatment and medication from his doctor.

Letchworth says that in Mr C's PPI Questionnaire he refers to his condition and that he wanted extra protection. But, because of the terms of the policy Mr C's pre-existing medical condition would not have been covered. I say that because the policy terms read as follows. The policy would exclude:

Any condition, injury, illness, disease, sickness or related condition and/or associated symptoms, whether diagnosed or not which you:

- *knew about or should reasonably have known about on the date that you signed your Credit Agreement, or*
- *had seen or arranged to see a doctor about during the 12 months immediately before the date you signed your Credit Agreement, and*
- *which occurs again within 12 months of the date that you signed your Credit Agreement*

I have looked at the available statement of demands and needs. None of the questions relating to the PPI (which have yes or no options) are ticked with any answers. It also seems that there weren't any questions asked which would have prompted the advisor to ask about Mr C's pre-existing medical condition if he did complete such a statement.

So I'm not satisfied in this case that adequate steps were taken to ensure that the recommendation was suitable for Mr C.

were Mr C's information needs met?

Letchworth says that Mr C would have been provided with leaflets relating to the policy and I have considered that documentation. As the sale took place in a meeting the advisor ought to have highlighted the key information to Mr C during the meeting. And I have not seen evidence, for the reasons I have set out above, that the advisor did so in this case.

In any event, even if the documentation had been provided, I don't think it would have highlighted the relevant exclusion to Mr C. Information about the exclusion was referred to on page four of a six-page key facts document. And the full details about the exclusion were on page three of an eleven-page policy document. So I don't think that information was prominently presented or highlighted to Mr C in the documentation.

would Mr C have acted differently?

I think that if Mr C had been advised that the policy was unsuitable for him, and if he had been given more information about the exclusion, he would not have taken out the policy. It seems that he was looking for cover as a result of his condition and that Mr C thought it was a likely cause of him needing to make a claim on the policy. It seems that accident and sickness cover was at least as important to him as the unemployment cover. So I think that this exclusion would have been important to him and that if he had realised the circumstances in which he may be able to make a claim may be limited he would not have taken out the policy.

fair compensation

I understand from the lender that the PPI policy and the loan ran full term. So Letchworth should:

- A. work out and repay the extra monthly payments paid by Mr C because PPI was added to the loan by:
- calculating how much the loan payments would have been if Mr C had taken out the loan without PPI
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 - paying Mr C interest (simple, not compound) on each of these amounts at the rate of 8% a year from the date each payment was made to the date the redress is paid[†]
 - taking into account the value of any successful claim.

- B. Write to Mr C to set out the details of the calculations and amounts under (A).

[†] I understand Letchworth is required to deduct basic rate tax from this part of the compensation. Whether Mr C needs to take any further action will depend on his financial circumstances. More information about the tax position can be found on our website.

Mr C should refer back to Letchworth if he is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

my provisional decision

For the reasons set out above, I currently intend to uphold this complaint against Letchworth Autoway Centre Limited. I now invite both parties to provide any further submissions they may wish to make, by no later than 22 October 2014 after which I will issue my final decision.

Anna Wilshaw
ombudsman