

## **complaint**

Ms M, Mr M and the legal representative of the late Mr T complain that Santander UK Plc trading as National and Provincial at the time (Santander) mis-sold them payment protection insurance (PPI) policy alongside a mortgage.

## **background**

Ms M, Mr M and Mr T took out a mortgage in 1992. At the same time they took out a PPI policy in Ms M's sole name.

In March 2019 I issued my provisional decision. In it I explained why I wasn't intending to uphold this complaint. The provisional decision is attached and forms part of my final decision.

I asked for all the parties to come back to me with any further information they wanted me to consider before I made my final decision.

## **my findings**

I've re-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 this case.

I haven't upheld this complaint. Neither party has given me any further information to consider so I see no reason to change my provisional decision.

## **my final decision**

For the reasons set out above and in my provisional decision I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M, Mr M and the legal representative of the late Mr T to accept or reject my decision before 11 May 2019.

Nicola Woolf  
**ombudsman**

### **COPY OF MY PROVISIONAL DECISION**

## **complaint**

Mr and Ms M complain that Santander UK Plc trading as National and Provincial at the time (Santander) mis-sold them payment protection insurance (PPI) policy alongside a mortgage.

## **background**

Mr and Ms M and Mr T took out a mortgage in 1992. At the same time they took out a PPI policy in Ms M's sole name.

This policy covered Ms M only, if she was off work because of an accident or sickness or if she lost her job. It cost £43.81 per month and although Santander can't say exactly what the monthly benefit would have been if Ms M made a successful claim, it more likely would have covered the monthly mortgage repayments for up to 24 months per claim.

Our adjudicator looked at this complaint and said that she didn't think it should be upheld. Mr and Ms M disagreed with this view and asked for the complaint to be referred to an ombudsman for a final decision. So the case has been passed to me.

### **my provisional 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 this case.

Ms M in particular has made detailed representations about why she thinks the PPI was mis-sold for which I thank her. I want to assure Mr and Ms M that I have taken into account each of their points carefully. And although I appreciate Mr and Ms M will be disappointed with my decision I'm not intending to uphold this complaint. I will explain why below.

I have written this provisional decision to give Mr and Ms M an opportunity to come back to me before I make my final decision as I realise how strongly they feel about the PPI being mis-sold and how important my decision is to them. But I hope I've answered the queries which have been raised in their complaint. For ease of reference I have headed each paragraph below to signpost what I have considered in order to make my decision.

This sale happened over 27 years ago and Santander doesn't have all the information. This isn't unusual or surprising as businesses aren't required to keep records indefinitely. I have also taken into account the length of time that has passed. So where any of the information is incomplete or inconsistent, I will make my decision based on the balance of probabilities. That is the standard of proof I will use and it means that I have to decide the complaint on what it *more* likely than not to have happened at the time. To do this I have used the evidence available, what the parties have told me and I've also taken into account what we know about the way Santander carried out these types of sales at that time.

#### *how was the PPI sold?*

The first point I have considered is how the policy was sold. Santander says this was a branch sale and that it advised Mr and Ms M and Mr T to take out the policy. Mr and Ms M are very clear that it couldn't have been a sale which took place in branch. They say they didn't speak to anyone and didn't travel to the branch where Santander says the sale took place. They are clear that this application was made by post.

I've thought about what they've said but I want to say that whichever channel of sale - whether it was a sale by post or in branch it doesn't make a difference to my decision. So I don't need to make a finding as to whether it was taken out through the post or in branch. It could have been that Mr and Ms M and Mr T returned the required paperwork through the post and they also might have received the mortgage offer through the post - that is what they clearly remember but it doesn't affect my decision either way.

#### *was it an advised sale?*

I do need to think about whether Santander recommended the PPI to Mr and Ms M and Mr T. Mr and Ms M are again clear that they spoke to no one and that no recommendation was given. But I am going to look at this sale as if Santander recommended the PPI. That is not to say I haven't thought about what they've told me but I say it was a recommended sale because I think this is fair to Mr and Ms M. As a recommended sale it places a higher standard of proof on Santander and it put more

responsibility on it for how it sold the policy. This will result in no detriment to Mr and Ms M. As a recommended sale this meant that Santander needed to take reasonable steps to make sure the policy was suitable for Mr and Ms M and Mr T's circumstances - that it was right for them. It also had another hurdle to ensure that it gave clear enough information so that Mr and Ms M and Mr T could make an informed decision about whether or not they wanted the PPI. I will look at whether the PPI was right for them below.

*did Santander give a fair choice about buying the PPI?*

Before I look at whether or not the PPI was right for them, Santander also needed to give Mr and Ms M and Mr T a fair choice about buying the policy. So I also need to consider whether I think it's more likely Mr and Ms M and Mr T were given an option about taking out the PPI or leaving it. Mr and Ms M say the forms they were required to complete signposted them to opt in rather than opt out. And they have told me they'd have been worried that their mortgage application would be turned down if they didn't take the recommended insurance and that their focus was on moving not on taking out insurance. Mr and Ms M are also concerned that including the clause within the application form for the mortgage was flawed - it was all tied in together and Mr and Ms M have said that the insurance should have been a standalone product presented openly and transparently.

Santander has provided a copy of the mortgage application completed at the time. This has been completed with Mr and Ms M and Mr T's personal details, the required amount of borrowing and there are sections about such things as building and contents insurance which Mr and Ms M and Mr T could have chosen or left (although buildings insurance was a requirement of getting the mortgage it didn't have to be taken out with Santander.) if they didn't want it. Section 8 of the form is headed '*Redundancy, Accident and Sickness Protection*'. The section says '*We recommend that your monthly mortgage repayments are protected against the event of Redundancy, Accident and Sickness...*' and it goes on to state '*please tick those applicants who require cover*'. Mr and Ms M say that the forms required them to opt in. I agree with this point but this doesn't mean that Santander did anything wrong here. It means that if Mr and Ms M and Mr T wanted the PPI they had to choose to take out the policy. They didn't automatically get the policy without choosing it. In order to buy the PPI Mr and Ms M and Mr T had to take steps to apply for the policy. And the paperwork suggests that this is what they did. They ticked the box to say only Ms M wanted the PPI and they have all signed and dated the application. So that looks like it is more likely that they made choices about taking out the PPI in Ms M's name and they knew they could refuse it if they didn't want it. There's also nothing written on the form which makes me think it's likely they would have understood they had to take it out in order to secure the lending. And although it's only a sample of an application form that Santander has provided, I think Mr and Ms M would likely have to complete a similar separate form to apply for the PPI. I also think the statements would have set out the cost of the PPI separately from the mortgage repayments. So I can't uphold Mr and Ms M and Mr T's complaint about this aspect of the application. But I've gone onto consider all the other points Mr and Ms M have raised.

*was the PPI suitable?*

The next step is for me to consider whether the policy was suitable for Ms M – the person who was covered by the policy. I think it was suitable. I will explain why.

- I can see Ms M was eligible for the policy and she was working and in good health *at the time* she took out the PPI - so I can't say she would have been affected by any of the main limitations or exclusions which could have made it more difficult to make a successful claim if she'd needed to.
- Mr and Ms M have told me about their financial situation. They say they had three salaries, some savings - having sold their previous home they waited until they found their ideal home and were living with Mr M's mother for a long time; giving them an opportunity to save. And Ms M had private healthcare from her employer. Ms M has also told me that her job was secure. All in all they say they didn't need the PPI. But this policy would have paid out in addition to any sick pay Ms M would have received and for longer than her sick pay lasted. If

Ms M couldn't work then their income would have significantly reduced. I have also taken into account that the PPI was in place to cover their mortgage. This was secured over their home and the consequences of not being able to meet the repayments were serious. I think on balance it's more likely they chose to cover Ms M for the protection it gave and would have offered peace of mind if they fell into difficulty. Thinking about Ms M's private health insurance. This wouldn't have covered the same risk as the PPI. It would have covered medical expenses. It did not pay out the monthly mortgage expenses if Ms M couldn't work or lost her job. And whilst I acknowledge that Mr and Ms M had been able to save whilst they were searching for their ideal home, these savings were likely to be earmarked for other purposes – their new home; if not then they could have used them for other essential living costs which they might have needed if Ms M couldn't work or lost her job. Whilst I accept that Ms M had a secure job circumstances can always change and the insurance was there in place to protect an important asset if things did go wrong. And this PPI paid out for 24 months which would likely have been a good length of time for Mr and Ms M to have some breathing space if they fell into difficulty.

- At the time the cost of the policy was comparable with other similar policies sold and there's nothing to make me think it was unaffordable when they took it out.

*was the information clear?*

As I explained above, as well as making sure it was the right fit for Mr and Ms M and Mr T's circumstances, Santander also had to give clear enough information about the policy, including information about its exclusions and limitations and its cost. Mr and Ms M say that the information was definitely not clear. At no point did they speak to anyone and they weren't taken through limitations or exclusions and none of the key points were explained. It's possible that not all the information was as clear as it could have been. But that's not enough for me to uphold the complaint. I next need to decide whether if Mr and Ms M and Mr T had been given more or better information they would have changed their mind about buying the policy.

*would better or clearer information have put off Mr and Ms M and Mr T from buying the PPI?*

Looking at everything I can't say it would have. I say that because even if they'd been given better information about the policy exclusions and limitations I don't think at that time Ms M was affected by them - so that wouldn't have likely changed their mind about taking it out. And as I've explained above, I think on balance they chose to take it out knowing they could refuse the PPI. It also looks like it was affordable - so for much the same reasons as I've found that the policy was suitable and they had a need for the PPI I can't say they'd have been put off buying it.

I've also thought about what Mr and Ms M have said about the dates of the mortgage application and when the payments were taken. The mortgage application was dated December 1991 and the payments seemed to start in 1992. That's understandable as the mortgage more likely began in 1992 but Mr and Ms M and Mr T would have had to complete application forms before then in order to apply for their mortgage. So I think the records reflect that the mortgage started in 1992 and that's when the PPI payments more likely started.

I've also thought about what they've said about other policies which they held with different providers. Mr and Ms M have told me that in contrast with Santander these policies were reimbursed without problems. But it is important to state that each case is decided entirely on its own merits. What applies in one circumstance will not be applicable in another. So amongst other things but not limited to these points, it might have been a different type of product, a different cost, a different application procedure and a completely different set of personal circumstances which lead to a different conclusion.

I'm sorry to disappoint Mr and Ms M but I hope the reasons I've given explain why I'm not intending to uphold this complaint.

**my provisional decision**

For the reasons I've set out above, I'm not intending to uphold this complaint.

I now ask both parties to provide any further information they wish me to consider by 8 April 2019 before making my final decision.

Nicola Woolf  
**ombudsman**