

complaint

Mr T complains that he was mis-sold mortgage payment protection insurance ('MPPI') by Moneycare Financial Planning Ltd.

background

I attach my provisional decision of 30 November 2016, which forms part of this final decision.

In that provisional decision, I set out the background and circumstances of this complaint and explained why I was intending to uphold it.

I invited Mr T and Moneycare to send me any more information or comments they wanted me to consider, before I issued my final decision.

Mr T has said he's got nothing to add to what he'd already told us. But Moneycare has disagreed with my provisional findings, and sent me its detailed comments.

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 T's case.

I've carefully considered all that Moneycare has said, including in its response to my provisional decision. But I've reached the same conclusions as in that provisional decision, for essentially the same reasons. And I think it's fair and reasonable to uphold this complaint.

Moneycare's comments on my provisional decision can in my view be largely summarised as follows.

It agrees that the lender's mortgage offer didn't say Mr T had to have MPPI. But it says the lender's administrative staff had told it over the phone that they would only work on Mr T's application for a mortgage if he also agreed to apply for MPPI at the same time.

Moneycare says it then told Mr T that this was the only lender it'd found which would consider lending to him, so if he wanted to proceed he'd have to apply for MPPI - but that he could cancel it once he'd got the mortgage. And it says he chose to go ahead on that basis.

It says it was 'given the impression' that this 'unofficial' condition was imposed because doing so would help the lender's staff hit their targets for selling MPPI. And that those staff wouldn't have minded if the policy was then promptly cancelled.

So Moneycare feels it's wrong for me to base my decision on 'normal lender policy', as this was 'not a lender matter but a staff issue reflecting the work involved and the incentive they wanted'. And it says Mr T was 'always aware of the facts and choices available to him'. He could've decided not to go ahead with the application and gone to other brokers, or contacted potential lenders directly.

One of Moneycare's advisers has signed a note saying this is what happened. And it's possible it did. I'm certainly aware that some lenders set targets for staff to sell MPPI.

But, although it has restated and elaborated on its version of events in reply to my provisional decision, Moneycare still hasn't provided any phone notes or other paperwork from the time of the sale to show me what discussions it had with the lender. Or any evidence from the lender or its relevant staff to confirm what Moneycare has told us.

And as I've said, the mortgage offer – which is the only record I've seen from the time, setting out the lender's position - didn't make MPPI a condition of the loan. Rather, it said that Mr T didn't have to take out any insurance, except buildings cover, to get the mortgage.

I said in my provisional decision that I didn't think Mr T was given a fair choice. After thinking carefully about Moneycare's further comments, that's still my view. I don't think the position was presented to him clearly.

He'd been told he had to apply for MPPI, but he then got a mortgage offer that said he didn't need it. Moneycare told him he could cancel the MPPI straight away, once he got the mortgage offer. But it'd be usual for a lender that required a borrower to have MPPI to want him to keep it for a time. So I don't think Mr T would've been sure he could cancel his policy immediately, without risking the continuation of his mortgage. And bearing in mind he'd had difficulties getting a mortgage, I think this would've been an important concern for him.

I know Moneycare feels strongly, and has spent time and effort responding to us in detail. I can see that, if what it has told us is right, Moneycare may've been put in a difficult position by the lender. It might have grounds for recourse against the lender about that. But it was Moneycare that sold the MPPI to Mr T. In my view, the sale wasn't done correctly, in that he wasn't given a fair choice. And to my mind, Moneycare has to take responsibility for that.

I should add that Moneycare has said that in my provisional findings, I assumed or implied that it had advised Mr T to apply for MPPI for its own financial gain. I don't agree that I'd suggested that, and I'm not doing so now either. But Moneycare had to give Mr T a fair choice. In my view, for the reasons I've set out, it didn't. So weighing up all the information that I've got, on balance I think it's fair and reasonable to uphold Mr T's complaint.

putting things right

Moneycare should put Mr T in the position he'd be in now if he hadn't taken out MPPI. The MPPI policy should be cancelled, if it hasn't been cancelled already, and Moneycare should:

- Pay Mr T the amount he paid each month for the MPPI.
- Add simple interest to each payment, from when he paid it until he gets it back. The rate of interest is 8% a year[†].

If Mr T made a successful claim under the MPPI policy, Moneycare can take off what he got for the claim from the amount it owes him.

[†] HM Revenue & Customs requires Moneycare to take off tax from this interest. Moneycare must give Mr T a certificate showing how much tax it's taken off, if he asks for one.

my final decision

For the reasons I've explained, I'm upholding this complaint.

Moneycare Financial Planning Ltd is to pay Mr T the fair compensation that I've described.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 6 February 2017.

Chris Langford
ombudsman

Copy of Provisional Decision

complaint

Mr T complains that he was mis-sold mortgage payment protection insurance (MPPI) by Moneycare Financial Planning Ltd.

background

Mr T took out a mortgage in 2007. He also bought a monthly premium MPPI policy. Mr T tells us the policy was later cancelled. But he's complaining about how it'd been sold to him. Among other things, he says he wasn't told it was optional.

Our adjudicator didn't think his complaint should be upheld. But Mr T doesn't agree, so it's come to me to decide.

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 Mr T's case.

Having done that, I've provisionally decided to uphold his complaint. I'll explain why.

Mr T thinks the sale took place in a meeting. From what I've read and been told, that's probably right. But I don't know what was said in those discussions. So I have to decide what I think's most likely to have happened based on the paperwork that we've been sent, what Moneycare has told us about the sale process, and what Mr T can recall about it.

Mr T says he was told he had to have the MPPI, to get the mortgage - or at least he was led to believe that taking it out would improve his chances of getting it.

Normally, Moneycare would've had to make it clear that MPPI was optional. But a lender was able to make having MPPI an essential part of a particular mortgage offer, if it so wished, as long as the potential borrower was made aware of this. The borrower could then decide whether to go ahead, including taking out MPPI, or to explore getting a different mortgage without MPPI.

Moneycare accepts that at the time he agreed to take out the MPPI, Mr T wasn't given any choice about whether to have it, if he was going to get the mortgage. It's told us that it 'advised him that if he really wanted [this mortgage] we would have to arrange this cover'.

But Moneycare says that's because the lender had said it would only 'consider the mortgage application if the application included an agreement to take out PPI cover'. Moneycare says it told Mr T that he had to have MPPI, to get that mortgage. So he had to either apply for MPPI, or not go ahead with the mortgage - although Moneycare says it hadn't been able to find any other mortgages available to Mr T which didn't also require him to have MPPI.

I don't know what the lender had told Moneycare about MPPI, if anything. At present I've not seen anything to show me clearly that the lender actually required MPPI as a condition of this particular mortgage. Or, if it did, what the terms and duration of that MPPI had to be. On the contrary, the mortgage offer that was sent to Mr T said he didn't have to take out any insurance (apart from buildings cover).

If the MPPI wasn't a requirement of the lender, Moneycare should've made it clear to Mr T that he didn't have to take it out. And that whether or not he had it would make no difference to whether he got the mortgage. From what I've read and been told, it didn't do that.

If however the lender did require him to have MPPI, in my experience I would've expected it to require him to keep it in place for a period of time. Moneycare says it 'recommended that as soon as his mortgage completed he could cancel his cover', so it would only 'have cost him a single premium of £39.92 in order to be able to purchase the house he wanted'. But if the lender was insisting he took out MPPI as part of the mortgage, I think it's unlikely the lender would've been satisfied if Mr T had cover just for one month, and then cancelled it.

Either way, I don't think Mr T was given a fair choice. The mortgage application included a statement that Mr T was providing MPPI cover. So by that stage, in my view he'd already agreed to have it. And to my mind it's likely he'd done so because Moneycare had led him to think he had to have it, to get the mortgage.

When the mortgage offer was received, it didn't say he had to have MPPI. But Moneycare doesn't seem to have told him that he didn't need it at all. Rather, Moneycare advised him he could have it for a month, and then cancel it.

So I don't think Mr T would've been clear whether or not he had to buy MPPI. I've not seen anything to show me clearly that the lender required Mr T to have it. But he probably thought it did, having previously been told that.

Moneycare says Mr T 'knew that he could cancel the policy if he didn't want it'. Or that he could've changed his mind and not taken it out, after he'd seen the mortgage offer. But bearing in mind what Moneycare had told him, I think he would've been concerned that doing either might be a breach of the mortgage conditions. And anyway, he'd already agreed to buy it by then.

Moneycare has also told us that Mr T had some existing PPI, which didn't meet the lender's criteria. But I've seen nothing to tell me what those criteria were - if indeed there were any. So I don't know if that's right.

Overall, the events surrounding the sale of this MPPI policy aren't very clear. But in my view, taking into account all the information that I've got up to now, Moneycare didn't give Mr T a fair choice. And on balance, I think it'll be fair and reasonable to uphold his complaint.

putting things right

Based on what I've read and been told so far, I'm proposing to uphold this complaint, and to tell Moneycare to put Mr T in the position he'd be in now if he hadn't taken out MPPI. I intend to say that the policy should be cancelled, if it hasn't been cancelled already, and that Moneycare should:

- Pay Mr T the amount he paid each month for the MPPI.
- Add simple interest to each payment, from when he paid it until he gets it back. The rate of interest is 8% a year†.

If Mr T made a successful claim under the MPPI policy, Moneycare can take off what he got for the claim from the amount it owes him.

† HM Revenue & Customs requires Moneycare to take off tax from this interest. Moneycare must give Mr T a certificate showing how much tax it's taken off, if he asks for one.

my provisional decision

For the reasons I've explained, I'm intending to uphold this complaint. And to tell Moneycare Financial Planning Ltd to pay Mr T the fair compensation that I've described.

I invite Mr T and Moneycare to let me have any more information or comments they'd like me to consider, before I give my final decision. These should please be sent to us by the date I've indicated above.

Chris Langford
ombudsman