

complaint

This complaint is about a mortgage payment protection insurance (PPI) policy taken out in 1995. Mr S says National Westminster Bank Plc ('NatWest') mis-sold him PPI.

background

The background and circumstances leading up to this complaint, which includes Mr S's circumstances at the time of the sale as well as the PPI policy benefits, limitations and exclusions of cover, aren't disputed. So, I haven't repeated all of this information here.

Our adjudicator did not uphold the mis-sale complaint. And NatWest told us that as the commission for Mr S's PPI was less than 50% of what he paid, NatWest didn't need to pay back any of the commission he paid for the PPI.

Mr S's representative disagreed with the adjudicator's opinion – they didn't raise any new or additional points but repeated the same complaint points and arguments they'd previously made.

As the complaint couldn't be resolved informally, it has been passed to me for a final decision.

my findings

Although I have only included a summary of the complaint, I have read and considered all the evidence and arguments available to me from the outset, in order to decide what is, in my opinion, fair and reasonable in all the circumstances of this complaint.

When considering what is fair and reasonable, I am required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

We've set out our general approach to PPI mis-sale complaints on our website and published some example final decisions that set out in detail how these relevant considerations may apply to PPI sales like Mr S's. I haven't set out that detailed information here, but I've taken into account all relevant considerations in deciding Mr S's complaint.

Having done so, I've decided not to uphold the mis-sale complaint. I've also considered the issue of non-disclosure of commission. And I've decided NatWest didn't need to tell Mr S about the commission it received - so NatWest doesn't need to pay back any of the commission Mr S paid for the PPI. I've summarised my reasons for each of these conclusions below.

In summary, my reasons for not upholding the mis-sale part of this complaint are:

- I think NatWest made it clear that Mr S didn't have to take out the PPI and he chose to take it out. I say this because the sale happened approximately 26 years ago, so it's maybe not surprising that neither party has been able to provide the application for the sale. But I have thought that NatWest told us that the credit started in 1986, some nine years before Mr S took out cover to protect his payments for it. In any event, considering how long ago the sale was, and in the absence of detailed testimony from Mr S to the contrary, I have seen insufficient evidence to uphold this complaint on this matter.

- NatWest didn't recommend the PPI to Mr S - so it didn't have to check that the PPI was right or suitable for him. But it did have to give Mr S enough clear and timely information so he could decide for himself if it was right for him.
- It's possible the information NatWest gave Mr S about the PPI wasn't as clear as it should've been. But I've found that he chose to take it out - so it looks like he wanted this type of cover. The cover wasn't fundamentally wrong for Mr S. The policy could have paid out in addition to Mr S's sick pay and for longer than his employers would have paid him at his full rate of pay. And Mr S told us that he had only limited other means he could rely on to make his repayments if he was too ill to work, or if he lost his job. There was nothing about Mr S's employment which would have made it difficult for him to claim. Although Mr S says he had medical conditions sometime before the policy was taken out, I don't think better information about the existing medical condition exclusion would've caused him to change his mind about taking out the policy. I say this because Mr S has provided no detailed testimony about the conditions and no testimony that they cost him any ongoing issues or caused him to miss time off work, such that he would have thought these to be the most likely reasons he would have needed to miss significant time off work in the future. So, I don't think Mr S would've acted any differently had he known more about the exclusion. There were also no additional restrictions on cover for mental health or back problems. It also looks like it was affordable – so it seems like it would have been useful for him if something went wrong. Because of this I don't think Mr S would have declined the cover had NatWest done anything more.

Overall, I consider that Mr S would have still taken out PPI. The policy was sufficiently close to what it's likely he thought he was getting and I think the policy could provide a useful benefit in a difficult time, given his circumstances at the time. And in those circumstances, I think that he would have taken out the policy in any event.

Mr S's representative has raised a number of what I consider to be general complaint points, which it says apply to all PPI complaints. These general points include: a claim that the Financial Ombudsman Service is not correctly applying the regulator's rules and guidance for handling PPI complaints; these policies represented poor value because of the number of significant exclusions and limitations of cover coupled with the low claims ratio; and the duty of utmost good faith meant NatWest should have disclosed the poor value and explained the significance of the limitations and exclusions and the impact it had on the chances of making a claim.

But Mr S's representative has not said how these points apply to the specific facts and circumstances of Mr S's individual complaint – just that they apply to all PPI complaints.

I have thought about these things and how they might apply in Mr S's particular case. But these points don't persuade me to alter my conclusions about what is fair and reasonable in all the circumstances of the complaint – for the reasons I've set out above I don't uphold the mis-sale element of this complaint.

This means NatWest doesn't have to pay back all of the cost of the PPI to Mr S.

non-disclosure of commission

As I said above, I've also considered the issue of non-disclosure of commission, including whether the non-disclosure resulted in an unfair relationship under section 140A of the

Consumer Credit Act – and if so, what fair compensation would be to remedy that unfairness.

Having done so I've decided NatWest didn't need to disclose the commission it received, so NatWest doesn't need to do pay back any of the commission Mr S paid. My reasons are set out below.

was there an unfair relationship?

Mr S's representative has made a number of representations about this part of the complaint including the impact of the Plevin¹ judgment and sections 140A and 140B of the Consumer Credit Act on his complaint.

In summary they have said Mr S should get back all the money he paid for the policy because: NatWest failed to tell Mr S about the high commission and profit-share rates paid, the low claims ratio and the restrictions and exclusions on cover. Because they say that meant the policy was poor value, I should find that Mr S wouldn't have taken out the policy had they known about the level of commission and he should receive a refund of all the premiums he paid.

But in this case, NatWest has told us that the commission for Mr S's PPI was less than half of what he paid for each premium. We've looked at how NatWest has worked this out and based on what we've seen, I'm satisfied that the commission in Mr S's case was less than half the cost of the PPI.

As that's the case, taking into account:

- the effect of section 140A and B of the Consumer Credit Act;
- The Supreme Court judgment in Plevin and the conclusion in that case; and
- The FCA's rules and guidance for handling complaints about the non-disclosure of commission and profit share - introduced in light of the Supreme Court judgment in Plevin - which requires a business to presume that the failure to disclose commission gave rise to an unfair relationship where the business expected commission and profit share to be more than 50% of the cost of the policy

I don't think NatWest needed to tell Mr S about the commission. So, it follows that I don't think the non-disclosure created an unfair relationship - I don't think NatWest treated Mr S unfairly.

This means NatWest doesn't need to pay Mr S back any of the commission he paid for the PPI.

my decision

Overall, having considered all the evidence and arguments to decide what is, in my opinion, fair and reasonable in all the circumstances of this complaint and for the reasons I have set

¹ *Plevin v Paragon Personal Finance Limited* [2014] UKSC 61 in which the Supreme Court concluded that the non-disclosure of commission could lead to an unfair relationship

out above, I don't uphold the mis-sale element of Mr S's complaint or make any award in favour of him for this part of the complaint.

And because I've decided that National Westminster Bank Plc didn't need to disclose the commission it received, it doesn't need to pay back any of the commission Mr S paid for the PPI.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr S to accept or reject my decision before 7 October 2021.

Douglas Sayers
ombudsman