

## **complaint**

Mr T complained that he made a claim on a payment protection insurance (PPI) policy, but that it was turned down by the insurer. Mr T says this is unfair and blames Nationwide Building Society, which sold him the policy.

Mr T also says that Nationwide mis-sold him an income protection policy in 2011.

## **background**

Mr T's current complaint is related to a complaint he made to us several years ago.

In 2008 an ombudsman upheld a complaint Mr T made against Nationwide. Mr T had had a mortgage payment protection insurance policy from 2000, but in 2002 he re-arranged his mortgage, and so the 2000 policy ended. The ombudsman said Nationwide had made an error in not advising Mr T to take out mortgage PPI for the new loan in 2002, and as a result Mr T had found himself not covered when he needed to claim. The ombudsman went on to say:

*"I should also say that if [Mr T] had taken out such a policy he would have been able to continue with it after he had received the benefit due for his claim and possibly claimed again in the future if he had further problems as a result of the same condition. As a policy was never set up he will not be able to do this, and if he wants further cover he will have to arrange a new policy. This could of course mean he may have problems if he tries to claim in the future because most policies exclude medical conditions that pre-existed them. However, if [Mr T] runs into this problem he would have the right to make a further complaint about this against Nationwide, which we will consider if it becomes necessary for us to do so".*

Mr T took out a new policy in 2008, but it was only to cover him for unemployment and not accident and sickness – even though the 2000 policy had offered this fuller cover. Mr T says he couldn't afford the premiums for the full policy.

In 2011 Mr T accepted an offer from Nationwide to upgrade his cover to an income protection policy which included accident and sickness. But when he claimed in 2012 he was told he wasn't covered for illnesses that already existed before 2011.

Mr T says the situation wouldn't have arisen if Nationwide hadn't made the mistake in 2002. He would then have continued with the policy he'd had with his previous mortgage and would have paid the fixed premium of that time.

Our adjudicators didn't recommend the complaint be upheld. They said the policy hadn't been mis-sold in 2011. They said that Nationwide had given Mr T adequate information about the policy. They also said Mr T had had the opportunity to take out sickness cover in 2008, and could have reduced his benefit level to meet his budget. They said the ombudsman in 2008 had assumed that Mr T would take out cover at the earliest opportunity.

Mr T didn't agree and so the matter came to me for a decision. I reached a different view of the case from that reached by the adjudicators. So I sent out a "provisional decision" setting out my thinking. I said the following:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*When the ombudsman made his decision in 2008, he made clear that Nationwide should put Mr T back in the position he'd have been in, if he'd been sold a mortgage PPI policy in 2002. Mr T is really complaining that Nationwide failed to do this – because it only offered him a replacement policy which [he] couldn't afford [...], and so he had to compromise by not covering his wife and by only taking unemployment cover. (Nationwide says that Mr T's wife was never covered by the policy.) As a result, when he came to claim because of disability in 2012, he was told he wasn't covered.*

*Given the circumstances of the new policy of 2008, I think it fair to consider this as an "advised sale". Mr T had made a successful complaint to the ombudsman service, and an ombudsman had told Nationwide to put Mr T back in the position he would've been in if it hadn't made a mistake. It would be reasonable for Mr T to believe that Nationwide was taking into account all his circumstances, including the ombudsman's decision.*

*In those circumstances I think Nationwide had a duty to advise Mr T about what would be a suitable policy. He says he wanted a policy that covered him and his wife on the same terms of [2000]. He says that policy had a fixed premium without any potential for increases in cost. But he says the adviser in 2008 recommended that he take out unemployment-only cover, if he couldn't afford the premiums to cover both him and his wife for accident and sickness as well.*

*Nationwide has been able to provide only limited information about what happened during that sale. But I would expect it to find evidence that it clearly warned Mr T of the shortcomings of the policy, given that it knew he wanted a reinstatement of his position in [2000]*

*Mr T has shown over many years that full cover is important for him. From what he's said, and how he's acted, I'm inclined to believe he'd have taken out insurance that covered him for unemployment, sickness and accident. That is, if the options had been properly set out for him. And if they'd been made affordable to him at the levels he previously paid.*

*Further, Nationwide seems to have accepted that the PPI in 2008 was mis-sold in that it didn't cover Mr T even for unemployment benefit – because he didn't meet a requirement to live in the house he had mortgaged and covered with MPPI.*

*I'd also add that Mr T seems to have suffered a list of errors and confusions at the hands of Nationwide. There were first the errors that happened in 2002, and which Mr T had to struggle to get corrected so that his claim could be paid. This was paid eventually in 2008 after the intervention of my colleague.*

*He was then, as I have said, seemingly misadvised in 2008 on the new policy. And in 2011 he took out a different policy which he was told would replace his existing policy. But Nationwide continued to take out premiums for both policies. And, in a letter of 9 December 2011 setting up the new policy, it said:*

*"...once you have been continuously covered for accident & sickness for a minimum of 12 months you will be entitled to claim for a pre-existing medical condition. Therefore, as we are treating Lifestyle Protector as a continuation of your MPPI policy, your 12 months exclusion period started from your original MPPI policy start date."*

*When Mr T did seek to claim he was told this wasn't accurate, and in fact the pre-existing medical condition (PEMC) restriction did apply to him. This was because the accident and sickness element of the policy had started less than 12 months earlier.*

*When he complained that the 2008 policy had been mis-sold to him, Nationwide said he couldn't have a refund because he'd already had a claim paid worth more than the refund. This claim was the one resulting from the ombudsman's decision of 2008. But I think there is an error of logic here which has further caused Mr T confusion and annoyance. Either Nationwide thinks the policy that started in 2008 was a continuation of the [2000] policy – in which case why hasn't it reinstated the terms of that [2000] policy; and make sure his latest claim was paid? Or it says that it is not a continuation, but a new policy – in which case why is it saying he has a claim to offset against the refundable premiums?*

*But this may prove irrelevant anyway, if I decide that the proper redress for a mis-sale of the 2008 policy is to pay Mr T compensation for his later claim.*

*If Nationwide had properly put Mr T back in the position he should've been in, it would have offered him similar cover at similar cost to the cover he should've had in 2002. Nationwide doesn't appear to have done this, and as a result Mr T has lost out significantly.*

*My current view is therefore that Nationwide should arrange for Mr T's sickness claim to be assessed as though he'd had continuing cover since 2002. It should pay Mr T the equivalent of the benefits he'd have received for any eligible claims he could have made since 2008. It is entitled to take off the premiums that Mr T would have paid towards a policy.*

*Nationwide has said the policy of [2000] had premiums that could increase; and that it could change the terms of the policy. I think this is likely, given how these policies usually work – unless Mr T can show evidence against this.*

*Nationwide also says Mr T's wife wasn't covered by the policy in [2000]. Given that Nationwide is saying this, and Mr T hasn't said he's needed to claim on behalf of his wife, I currently think that this should be resolved without Mr T's wife being included on the policy. Unless that is Mr T has evidence to show this is wrong.*

*If the policy had been created properly in 2008, the 2011 policy would probably have been unnecessary. If a policy running on from 2002 is to be created, the level of benefit should be at the level given in [2000] – and the premiums applied accordingly. If Mr T wishes the level of cover to be increased to that taken in 2011, he should be given this option from 2011 with an appropriate increase in premiums. If PEMC ["pre-existing medical condition"] or other limitations to benefits would apply to the increased levels of 2011, Nationwide should be entitled to apply these (but only to those increased levels).*

*I have explained above the trouble that Mr T has been put to by this matter. If I confirm my provisional decision I'm likely to say Nationwide should pay Mr T £500 to help compensate for the trouble and upset it has caused him."*

In response Nationwide and Mr T sent me detailed comments on my provisional decision; and also on the comments each party had sent in.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. This includes the information sent to me since my provisional decision.

In response to my provisional decision, Nationwide has put forward reasons why it thinks Mr T is responsible for the situation he has found himself in. It says he took six months in 2008 to organise the policy again. And that, when he did, it was likely he consciously chose to accept just unemployment cover – and that he did this because this was within his budget. It says that unemployment cover he took cost £52.40 for benefit of £1050; but that a replacement of the full cover he had in 2000 (with £900 benefit) would have cost £62.91 (£125.82 if his wife were included). It puts forward reasons why it thinks Mr T has knowingly made certain decisions about his insurance from 2008 onwards.

Overall, Nationwide has carefully and thoughtfully explained why it disagrees with many of the findings and conclusions I reached; and it has corrected some details that are in my findings, whilst acknowledging that this is a complex and detailed case.

However I still must look at the overall fairness of the outcome, and the balance of risk in reaching a fair outcome. My colleague in 2008 found in Mr T's favour and required Nationwide to put right its errors. This fact, along with confusions caused by Nationwide since my colleague's decision, tells me that Nationwide should have shouldered the greater responsibility in making sure Mr T received justice. And that it still has that responsibility.

Mr T has also had a responsibility to make his best efforts to help himself. But this is in the context that this would have been much easier, if Nationwide hadn't made its original error. Also relevant is the fact Mr T doesn't have Nationwide's expertise in understanding insurance and financial matters.

Mr T had had a long struggle to get Nationwide to give him the cover he thought he'd taken out in 2000. This finally came in 2008 when my ombudsman colleague found in his favour. I haven't in any way looked behind that decision – both parties accepted the decision, and I have taken it as a settled fact.

Mr T has explained why he wasn't in a fit state to organise new insurance for a while after the ombudsman found in his favour in 2008. He was suffering from very worrying financial difficulties affecting his family, and he also had an extended period in hospital after complications from an operation – and says he was heavily medicated for a long time.

Mr T says that in 2008 Nationwide presented him with options for full sickness and unemployment cover, which he understood would have cost roughly twice what he reluctantly settled on. Nationwide however says that full cover would have cost Mr T only

about £10 a month more than the unemployment-only cover he finally agreed to take in 2008. Mr T says he was told it would cost £119 to £130 a month for full cover.

This suggests to me that Mr T truly didn't understand what was actually on offer to correct Nationwide's original error. It seems unlikely to me that Mr T would have chosen to underinsure himself so much, just for the sake of saving about £10 a month.

Nationwide says the sale in 2008 wasn't an advised one, meaning it was up to Mr T to inform himself and make a suitable choice from Nationwide's available products. In normal circumstances, I would probably agree. But I think that, in the unusual circumstances of this case, Nationwide had a special duty of care towards Mr T. It needed to make sure its staff knew to carefully advise Mr T how he could properly correct Nationwide's previous error. It had a responsibility to make sure Mr T understood his options and any advice given. This is because Mr T wouldn't have been in this situation if Nationwide hadn't originally made an error. (He also wouldn't have been sorting out his insurance during a stressful period of financial difficulty and prolonged ill health, if his insurance had run smoothly since 2002 as he had believed.)

I don't think Nationwide was careful enough in making sure Mr T didn't suffer further injustices from 2008. And the balance of risks, in ensuring justice, now leads me to confirm my decision that Mr T's complaints should be upheld.

I acknowledge that, from one point of view, it looks as though I am revisiting the decision of my colleague in 2008 and requiring a further settlement of that matter. But the redress I have suggested is really a consequence of the further injustice I think Mr T has suffered from 2008. Mr T appears not to have been fairly guided in 2008 to a proper replacement insurance for the one previously cancelled. This is why I now think it fairest to go back and try to create a policy that replicates the one that would have been set up in 2002.

In response to my provisional decision, Mr T has reasserted his belief that the premium for his original policy in 2000 was a fixed one – that is to say the premium costs would not increase ever. I gave my reasons why I thought this unlikely in my provisional decision. Mr T says that his understanding has been confirmed by telephone conversations he had with branch staff in 2016. Nationwide says there was a misunderstanding about what Mr T was asking during those calls – and that it was true that his premium for one of his policies had not risen initially during the brief period before it was cancelled. But the premiums would have risen later on. Nationwide says the original mortgage offer confirmed that the premium was variable – and I can see that this is the case for the offer made in February 2000.

Looking at all the evidence, I still think it is much more likely than not that the premium for the insurance was variable, and that Nationwide sold it in this way in 2000.

### **my final decision**

I uphold this complaint in Mr T's favour. I require Nationwide Building Society to do the following:

1. Arrange a policy that replicates the one that Mr T should have been given in 2002, or its nearest current equivalent that offers at least the same level of unemployment, sickness and accident benefit. It should be for the same premium he'd have paid, with an allowance for an increase in premium costs as applicable to the equivalent Nationwide policies of the time. Nationwide may do this by arranging a policy with an underwriter

who provides equivalent terms and for the correct price – or, if not, one subsidised by Nationwide. Or Nationwide should sit in the insurer's place for any potential future claims under the terms of the policy. This should be Nationwide's choice.

2. Nationwide should present to Mr T evidence of what the costs increases would be, and how this is justified.
3. Mr T wouldn't have needed to take out the policies that he did in 2008 and 2011 if he'd been given a proper replacement policy in 2008 following the ombudsman's decision. So Nationwide should cancel those policies (if Mr T agrees) and refund the premiums Mr T paid for those policies (if not already refunded). From these refunds and from claims payments, Nationwide may deduct the premiums Mr T should have paid for the new replacement policy from when it would have started in 2002 (except where previously accounted for in deductions from previous claims payments).
4. Unless an insurer agrees to take on Mr T's unsettled claims, Nationwide should sit in place of an insurer paying Mr T the equivalent of any benefits he would be due. It should assess Mr T's claims under the terms of the policy. On any resulting payments to Mr T, it should pay interest of 8% a year from the date of claim until it is actually paid. Given the length of time that has now passed, Nationwide should be flexible and reasonable about evidence it requires from Mr T under the policy.

Nationwide should pay interest at 8% a year on the following amount: the refunded premiums actually paid since 2008 less the premium Mr T should have paid each month instead. (HM Revenue & Customs may require Nationwide to take off tax from this interest. Nationwide Building Society must give Mr T a certificate showing how much tax it's taken off if he asks for one.)

5. If the above process still means that Mr T owes arrears of premiums, these may be deducted from any successful claim payment that Mr T now makes for the years 2008 to the date of my final decision.
6. Nationwide should explain in detail to Mr T how it has calculated everything including the premiums, interest and any claims payments.
7. Pay to Mr T £500 in compensation for the trouble he has been caused since 2008.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 21 October 2016.

Timothy Bailey  
**ombudsman**