

complaint

Mr M complains he was mis-sold payment protection insurance (PPI) when he took out a mortgage through London and Country Mortgages Ltd (L&CM), in April 2004. Mr M is represented in his complaint by ATC Associates (ATC). They say the PPI was mis-sold, because, (among other reasons):

- Mr M believed the PPI was part of the mortgage;
- he didn't need the policy, because he had sufficient other means to repay his mortgage, if he was unable to work due to accident, sickness or unemployment; and
- the PPI wasn't suitable for Mr M because he was self-employed at the time of sale.

background

Our adjudicator explained that L&CM wasn't covered by us at the time of sale – it was only covered by the Mortgage Code Arbitration Scheme (MCAS). This meant that we could only look into the complaint in the same way MCAS would've done.

MCAS could only have considered one of the complaint points Mr M has raised, about whether or not he was told the PPI was a condition of the loan, when it wasn't. So, that's all we can now consider. And based on the available evidence, the adjudicator didn't think that point should be upheld.

In response to our adjudicator's view, ATC have said:

- they believe L&CM did breach the mortgage code when it sold the PPI to Mr M;
- Mr M wouldn't have completed the online form as he didn't use a computer at that time;
- L&CM were aware that Mr M was self-employed and had adequate funds to redeem the mortgage without the need for insurance cover; and
- L&CM didn't carry out a proper risk assessment before selling the PPI to Mr M.

They have asked for an ombudsman's decision on the complaint.

my findings

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

I'm only able to consider a complaint if it falls within certain criteria set out in law and our case-handling rules. This PPI was sold in April 2004, which was before the sale of insurance by brokers (like L&CM) became regulated in January 2005. This means that L&CM didn't have to be covered by us when it sold this policy.

But the rules do allow me to consider some complaints about PPI sold before January 2005 where the business was covered by one of our former schemes. And L&CM was covered by one of these schemes (MCAS) at the time. It was also covered by us in October 2004. This means that I can consider Mr M's complaint against L&CM. But I have to consider it in the same way MCAS would have done.

MCAS could only consider whether and to what extent a firm breached its obligations to a customer under the Mortgage Code. The Code was mainly focussed on mortgage advice

and good lending practice rather than the sale of insurance. The only obligations it placed on firms when selling PPI were, in summary:

- to give a description of the insurance it could provide;
- to say whether it was a condition of the mortgage that PPI was taken out;
- to say whether PPI had to be arranged by that firm; and
- to give a general description of the cost of PPI.

ATC say Mr M thought the PPI *wasn't* optional – he thought it was part of the mortgage that was being arranged. This point is an alleged breach of the Mortgage Code. So I can consider it here for the reasons I've explained above.

I know that Mr M has other concerns about this sales process. For example, ATC say the policy wasn't suitable for Mr M, and a proper risk assessment wasn't carried out when the policy was sold. But I can't consider those concerns because they don't relate to a breach of the Code.

Bearing in mind the point which I *can* consider, for me to conclude L&CM breached the Mortgage Code I'd need to be convinced that it *explicitly* told Mr M he had to take out PPI to get the loan (when that wasn't the case).

L&CM isn't able to provide a script or call recording for the sale. This isn't surprising given the sale took place more than ten years ago. So I've looked at the documents that are still available from the time of sale to see what is most likely to have happened.

I've carefully reviewed the copy of the on-line mortgage application provided by the insurance administrator, and note that it doesn't make any reference to the PPI being a condition of the mortgage. I've also considered the offer letter sent by Halifax to Mr M at the beginning of April 2004, and I note that it does not contain any reference to PPI being a condition of the mortgage. In its final response letter, L&CM included excerpts from a letter it sent to him in March 2004. Again, the excerpts indicate that Mr M was advised there were no compulsory insurances that needed to be taken out in connection with the mortgage.

I appreciate that Mr M considers he was led to believe the policy wasn't optional. However, for me to be satisfied there was a breach of the Mortgage Code, I would need to see evidence that shows L&CM told Mr M he *had* to take out PPI when he did not. Taking everything into account, I'm not persuaded that L&CM breached the Code when it sold PPI to Mr M. I'm sorry to disappoint Mr M.

I note that ATC have mentioned in the documentation provided, that although Mr M repaid the mortgage in 2006, he continued paying premiums for the PPI until 2011. If Mr M wishes to complain about that, he will need to first contact the responsible business and give them eight weeks to respond before his complaint can be referred to this service.

my decision

My decision is that I don't uphold Mr M's complaint that he was mis-sold PP by London and Country Mortgages Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 30 November 2015.

Carolyn Harwood
ombudsman