

complaint

Mr F says D and K Motorcycles (D and K) mis-sold him a single premium payment protection insurance (PPI) policy when he took out a loan.

background

In 2006 Mr F applied for a loan over the phone with D and K to buy a motor vehicle. The loan paperwork was completed in the sales room and at the same time he was sold a PPI policy to cover his payments if he was unable to work due to accident or sickness or lost his job.

Our adjudicator thought the complaint should be upheld because he didn't think there was enough evidence to show that D and K had given Mr F the opportunity during the sale to actively confirm that he wanted to take the policy out or highlighted that the PPI was a separate product from the loan.

D and K disagreed. So the complaint has come to me for a decision.

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 F's complaint.

I've decided to uphold Mr F's complaint.

D and K had to make clear to Mr F that the PPI was optional and make sure Mr F agreed to take it. D and K say their salesperson would've done this and have given us a copy of the demands and needs statement and credit agreement signed by Mr F.

I've looked at these documents carefully. All the demands and needs statement shows me is that Mr F was eligible for cover, he would like his loan repayments paid off if he couldn't work and that the policy is recommended. It doesn't show me that it's been explained that Mr F doesn't have to accept the recommendation or that he agreed to buy the policy.

And although the cost of PPI on the credit agreement is set out separately from the loan it is all still lumped in together under the "Key Financial Information" which I think suggests that PPI is part of the credit agreement as standard.

And again there is nothing on the agreement that describes the PPI as optional or provides the option for Mr F not to take PPI – it is just included. So I can't say from these documents how PPI came to be on Mr F's credit agreement.

D and K have told us that Mr F would've been sent documentation about the policy after it was taken out. But I don't think receiving documents about the policy after it was sold shows me that D and K made it clear the policy was optional or that Mr F agreed to take the policy at the time of sale.

So taking everything into account, I can't say it's likely D and K did make it clear to Mr F that the PPI was optional or that he agreed to take it. So it follows that I uphold his complaint.

what D and K should do to put things right

Mr F borrowed extra to pay for the PPI, so his loan was bigger than it should've been and he paid more than he should've each month. So Mr F needs to get back the extra he's paid.

So, D and K should:

- Work out and pay Mr F the difference between what he paid each month on the loan and what he would've paid each month without PPI.
- Add simple interest to the extra amount Mr F paid each month from when he paid it until he gets it back. The rate of interest is 15% a year until April 1993 and 8% a year from then on[†].
- If Mr F made a successful claim under the PPI policy, D and K can take off what he got for the claim from the amount it owes him.

[†] HM Revenue & Customs requires D and K to take off tax from this interest. D and K must give Mr F 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 uphold Mr F's complaint against D and K Motorcycles and direct it pay the fair compensation outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 30 May 2019.

Caroline Davies
ombudsman