

## **complaint**

Miss F complains that P&H Motorcycles Ltd (“P&H”) mis-sold loan payment protection insurance (“PPI”) in 2005.

## **background**

I set out the background to this complaint and my initial findings in my provisional decision of May 2020. I’ve attached a copy here because this forms part of this final decision. In my provisional decision I explained why I was likely to uphold Miss F’s complaint and I invited both parties to let me have anything they thought was relevant in response.

Miss F replied and in summary she said she accepted my provisional decision. She then contacted us again because she received an offer of compensation from the lender of the finance agreement the PPI related to – not P&H the seller of the policy – and she doesn’t understand what’s going on.

P&H replied and said that, if the lender was offering compensation it was happy with this arrangement.

## **my findings**

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

Despite attempting to provide some clarity for Miss F and to resolve things informally, it’s still not clear to me why a different business – in this case the lender – who isn’t responsible for this complaint has offered Miss F compensation for her mis-sold PPI. P&H is the responsible business here. It’s also unclear from the copy of the correspondence Miss F has provided why the lender has offered compensation of around £870. This was a single premium policy, the upfront cost of which was over £2,000 before the addition of interest charges. So, on the face of it, it appears this sum falls well short of what is owed to Miss F.

In light of the continuing ambiguity around this matter and to provide Miss F with certainty of outcome, I feel it is appropriate to now go ahead and issue my final decision.

So, given that neither party has provided me with anything new to consider, I see no reason to change my mind and depart from my reasoning and conclusion as set out in my provisional decision – I uphold this complaint.

## **putting things right**

Miss F borrowed extra to pay for the PPI, so her loan was bigger than it should’ve been, and she paid more than she should’ve each month. So, Miss F needs to get back the extra she’s paid.

So, P&H should:

- Work out and pay Miss F the difference between what she paid each month on the loan and what she would’ve paid each month without PPI.
- Add simple interest to the extra amount Miss F paid each month from when she paid it

until she gets it back. The rate of interest is 8% a year<sup>†</sup>.

- If Miss F made a successful claim under the PPI policy, P&H can take off what she got for the claim from the amount it owes her.

<sup>†</sup> HM Revenue & Customs requires P&H to take off tax from this interest. P&H must give Miss F a certificate showing how much tax it's taken off if she asks for one.

### **my final decision**

For the reasons above and in my provisional decision, I've decided to uphold this complaint. And I direct P&H Motorcycles Ltd to pay Miss F compensation as set out in the section above. I make no other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 30 July 2020.

Paul Featherstone  
**Ombudsman**

*copy of provisional decision*

## **complaint**

Miss F complains that P&H Motorcycles Ltd (“P&H”) mis-sold loan payment protection insurance (“PPI”) in 2005.

## **background**

Briefly:

In 2005 Miss F took out PPI with a finance agreement to purchase a vehicle. Both things happened at the same time during a meeting in a showroom.

The policy provided protection for Miss F’s finance payments in the event she couldn’t work because of accident, sickness or unemployment – it also provided life cover (and critical illness cover for those who were self-employed at the time of the sale.)

The policy was a single premium policy, so its cost was added to the loan upfront attracting interest. The total cost was around £2,800 repayable over the five-year loan term. For the disability cover the policy would pay out for up to 24 months per claim – subject to an overall aggregate limit of 36 payments over the term. And for unemployment it was 12 months in total over the loan term.

At the time of the sale Miss F said she was working, but it was less than 16 hours a week (about 3 hours at the time) in her father’s firm. She said she was in receipt of incapacity benefit due to her health – she suffered from an existing medical condition present since childhood.

The adjudicator recommended the complaint should be upheld. They said because Miss F was working less than 16 hours a week, she didn’t meet the eligibility criteria - so the policy was worthless to her.

P&H disagreed – it said it wanted Miss F to provide payslips to demonstrate she was working less than 16 hours a week.

The adjudicator then provided further reasons for upholding the complaint. They said Miss F had an existing medical condition and the terms of the policy would’ve made it difficult for her to claim for her condition. And because she was working for her father, the terms of the policy would’ve also made it difficult for her to make a successful unemployment claim. As such, they didn’t think Miss F would’ve taken the policy out had P&H made these things clearer.

P&H disagreed with the adjudicator, so the complaint comes to me for a decision.

## **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 into account what’s relevant here in deciding Miss F’s complaint.

Having done so, I'm likely to uphold Miss F's complaint. And as I said above, I want to clarify and expand on my reasoning, which I've set out below.

P&H say they didn't advise Miss F or recommend PPI to her. And I've not seen enough evidence to persuade me that it did. This means P&H didn't have to ensure that the policy was right or suitable for Miss F. But it did have to give Miss F enough clear and timely information about the policy so she could make an informed decision about it.

Regardless of whether P&H provided advice or not, it needed to firstly establish that Miss F was eligible for the cover it was going to sell – whether by providing her with clear information about the policy's eligibility criteria or by asking her a series of questions. But I'm not persuaded it did this.

P&H says Miss F bought the "Gold" level of cover, which provided the benefits I set out above. The policy document applicable to Miss F's policy says under the heading "Section 1 Eligibility:

*You are covered under this policy if on the start date;*

*Gold*

- *For life cover, you are 18 or over but under 75...; and*
- *For disability, unemployment and critical illness cover, you are 18 or over but under 75... and*
- *You are working when you apply; and*
- *You are resident in the UK; and*
- *You have agreed to pay the appropriate premium for cover"*

The policy went on to define "Work (working)" as:

*"Working in paid employment for at least 16 hours or more a week in the UK or in self-employment in the UK. You must also be paying the correct class of National Insurance contributions."*

So, to be eligible – to qualify - for the *Gold* level of cover, one of the important criteria (Miss F had to fulfil all of them because the first four bullet points ended with an "and") was that Miss F needed to be working for at least 16 hours a week.

But in bringing her complaint, Miss F said that she was working less than 16 hours a week. She expanded on this by saying that she worked in her father's firm, and at the time of the sale she was working approximately three hours a week. Miss F says that she suffers with a medical condition and has done so since childhood. Because of this, she qualified for and was claiming incapacity benefit at the time of the sale. And she's provided supporting evidence of this in the form of a Certificate of Taxable Benefit Paid and Income Tax – a P60 substitute. I note this has already been shared with P&H.

To be eligible for incapacity benefit at the time of the sale, by definition any work Miss F did had to be for less than 16 hours a week – what was known as permitted work. So, I think it has been shown that, more likely than not, Miss F was working less than 16 hours a week and so was *not* eligible for the PPI cover sold to her by P&H. Because Miss F bought and paid for a policy which she was not eligible for - and so could not derive any benefit from - that was unfair. So, P&H needs to do something to correct the unfairness – it needs to put things right.

I've thought about everything P&H has said, including what it's said about wanting to see Miss F's payslips from the time; that Miss F was eligible for the other parts of the cover; that it's not liable for the compensation because the premiums were paid to the insurer; and that Miss F's employment circumstances have changed – she said she was working part-time but the adjudicator said she was self-employed. But these things don't change my decision.

Miss F has attempted to provide us with her payslips without success due to the passage of time. But in my view and as I've said above, Miss F has already provided sufficient evidence to persuade me that she was, on balance working less than 16 hours a week - so there is no need for her to provide anything more. Miss F was ineligible for the whole policy - not just parts of it. The policy eligibility terms I've set out above are clear on that.

I'm satisfied that P&H is responsible for the sale of PPI to Miss F and so the correct respondent in a complaint made about the sale– it is responsible for this mis-sale complaint.

Any confusion about Miss F's employment circumstances is because the adjudicator expanded on why they thought the policy wasn't right for Miss F – she was working for her father at the time and the policy terms would've treated any unemployment claim as if she was self-employed because it was a family business. And while I too have concerns about the appropriateness of the cover for Miss F and the clarity of the wider information she was given about it, I don't need to make any findings on these because I've concluded Miss F was not eligible for the policy in the first place.

### **putting things right**

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

So, P&H should:

- Work out and pay Miss F the difference between what she paid each month on the loan and what she would've paid each month without PPI.
- Add simple interest to the extra amount Miss F paid each month from when she paid it until she gets it back. The rate of interest is 8% a year<sup>†</sup>.
- If Miss F made a successful claim under the PPI policy, P&H can take off what she got for the claim from the amount it owes her.

<sup>†</sup> HM Revenue & Customs requires P&H to take off tax from this interest. P&H must give Miss F a certificate showing how much tax it's taken off if she asks for one.

### **my provisional decision**

For the reasons I've set out above, I've provisionally decided to uphold this complaint and I intend to direct P&H Motorcycles Ltd to pay Miss F compensation in line with the formula I've set out above. I don't intend to make any other award.

Paul Featherstone  
**Ombudsman**