complaint

Mr Y complains that he was mis-sold a single premium payment protection insurance ("PPI") policy by Rob Speed Motorcycles Ltd ("RSM") taken out in connection with a loan for a motorbike in 2006. Mr Y is represented by a claims management company.

background

The adjudicator concluded that the complaint should be upheld. RSM has not responded and so the matter has been referred to me for a final decision.

my findings

I have provided only a brief summary of the complaint above but, in reaching my decision, I have carefully considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this case. I have also taken account of any relevant regulatory rules, the law and good industry practice at the time the PPI policy was sold.

It seems to me the relevant considerations in this case are materially the same as those set out in our well-established general approach to complaints about the sale of PPI, which is published on our website. The key questions I need to consider therefore are:

- whether, in giving any advice, RSM took adequate steps to ensure that the product it recommended was suitable for Mr Y's needs; and

- whether RSM gave Mr Y information that was clear, fair and not misleading in order to put him in a position where he could make an informed choice about the insurance he was buying.

If there were shortcomings in the way RSM sold the PPI policy, I need to consider whether Mr Y would have done anything differently – ie not taken out the policy – if there had been no shortcomings.

Both RSM and Mr Y agree that the sale of the PPI took place in a face-to-face meeting and was advised. This means that RSM had to take adequate steps to ensure that the product it recommended was suitable for Mr Y's needs. I am not satisfied that it did so, for the following reasons.

The particular policy RSM sold to Mr Y was a single premium policy. This meant the PPI premium was added to the main loan account and it attracted interest over the course of the loan.

A feature of this policy was that, if the loan was repaid early and the policy cancelled, Mr Y would not have received a pro-rata refund of the insurance premium he had paid. The policy term says:

> *"After the first 30 days if you cancel the policy before its normal expiry …you may be entitled to a refund of part of the premium …The refund will be calculated using a method that takes account of the fact that the amount we may have to pay in the event of a claim is greater towards the beginning of the credit agreement than it is towards the end. This means that you will not get a proportionate refund of the premium."*

The policy document then illustrates the refund a customer might get if he repaid a loan with an original term of either 48 months or 72 months after only 12, 18, 24 or 36 repayments.

Essentially, the effect of this term was that, if Mr Y wanted to repay his loan early and cancel the PPI policy, its cancellation terms were inflexible. I think this policy term was significant in Mr Y’s case and goes to the heart of the suitability of the policy for his particular circumstances. That is because the evidence I have strongly suggests that Mr Y might well have wanted the flexibility to repay the loan and cancel the PPI early.

From the demands and needs statement Mr Y signed at the time, I can see that the term of the loan he agreed with RSM was five years. I can also see that he was asked how long he intended to keep the bike he was purchasing. He answered two years. So, it seems that, at the time he took out the PPI, Mr Y was contemplating replacing the bike when his loan and PPI still had three years to run. I think it is reasonable he might therefore have wanted the flexibility to refinance the loan and cancel the PPI with minimum financial loss. But the restrictive early cancellation terms of the policy RSM recommended to him would not have given him that flexibility.

I do not know what discussions took place between Mr Y and RSM at the sales meeting. However, I have seen nothing to suggest that RSM explained what impact the policy’s restrictive early cancellation terms would have had on Mr Y’s plans to repay the loan and cancel the PPI early. In particular, I have seen nothing that shows me RSM explained to him that he would not receive a proportionate refund nor how any refund would be calculated.

Because of this I do not think RSM took adequate steps to ensure the policy it recommended was suitable for Mr Y’s particular circumstances, taking into account his need for flexibility. In this situation, I think RSM should either not have recommended the policy to him or, at the very least, have made him aware that the policy was inflexible and might therefore be unsuitable for him.

I am also not satisfied that the documentation I have seen would have drawn to Mr Y’s attention the shortcomings in RSM’s recommendation by meeting his need for clear information about the restrictive early cancellation terms. These *are* set out in the policy document. But it is not clear to me when Mr Y would have received this document. From what I have seen, it is quite possible it would have been sent out to him some time *after* the sale of the PPI had taken place, meaning that he would not have had the opportunity to read about the restrictive early cancellation terms *before* he decided to buy the policy. And, even if he had seen it beforehand, they were are set out towards the end of a closely worded document and so were not prominently drawn to Mr Y’s attention. Also, the terms do not give Mr Y specific guidance on how he would calculate what rebate on the PPI might be due to him if he ended his five year loan early (the illustrations given are only for four and six year loans).

In conclusion, I do not think RSM took adequate steps to ensure the PPI policy it recommended was suitable for Mr Y in his particular circumstances. And I don’t think that the documentation he was given would have highlighted to Mr Y the shortcomings in the recommendation. Nor would it have met his information needs in relation to the restrictive early cancellation terms as they applied to his particular loan, and given his need for flexibility. Had it done so, on balance, I think Mr Y would have acted differently and decided not to buy the policy.

For these reasons, I uphold Mr Y's complaint.

fair compensation

It is my understanding that the loan and the PPI have run their full term. Rob Speed Motorcycles Ltd should:

A. work out and repay the extra monthly payments paid by Mr Y because PPI was added to the loan by:

  - calculating how much the loan payments would have been if Mr Y had taken out the loan without PPI;
  - subtracting those amounts from what Mr Y actually paid and paying him the difference;
  - paying Mr Y interest (simple, not compound) on each of these amounts at the rate of 8% a year from the date each payment was made to the date the redress is paid;†
  - taking into account the value of any successful claim.

B. Write to Mr Y to set out the details of the calculations and amounts under (A).

† I understand RSM is required to deduct basic rate tax from this part of the compensation. Whether Mr Y needs to take any further action will depend on his financial circumstances. More information about the tax position can be found on our website.

Mr Y should refer back to RSM if he is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

my final decision

For the reasons set out above, I uphold Mr Y's complaint against Rob Speed Motorcycles Ltd.

Jane Gallacher
ombudsman