DRN-4481520

The complaint

Mr T complains that he was mis-sold two policies by a predecessor scheme of Aviva Life & Pensions UK Limited (Aviva), alongside a mortgage in 1994. One of the policies was a decreasing term assurance policy (DTA) and the other was a type of payment protection insurance policy (PPI).

These policies were sold by General Accident to Mr T. However, Aviva, now General Accident is part of its group, has accepted responsibility for the complaint.

Mr T is being represented with this complaint. But for ease, I have referred to all comments as those of Mr T.

What happened

Mr T took out a mortgage in 1994. The mortgage advisor then passed Mr T's details to an advisor at a predecessor scheme of Aviva, to offer advice on a range of products including protection.

Mr T was then sold two policies. The first was a DTA policy, which would provide life cover of a decreasing basis. It started on 25 November 1994, it had a term of 25 years for a monthly premium of £8.15. It had an initial sum assured of £38,000.

The second policy was a PPI policy which would protect Mr T's mortgage payments in the event he was unable to work due to accident, sickness or unemployment (ASU).

It appears both policies lapsed in November 2000, which is when Mr T re-mortgaged.

Mr T first complained that the policies had been mis-sold to him, in August 2019. He said that he'd been pressured into taking the policies out and that he was told they were a requirement for the borrowing.

Aviva took some time to respond to Mr T. Initially they said weren't able to locate any information on the policies due to the time that had passed. They eventually responded but didn't uphold the complaints. They said that the DTA had been a suitable recommendation as it matched and protected the terms of his mortgage. They said the ASU PPI policy provided an appropriate benefit and Mr T was under no obligation to take it out. They also offered Mr T £150 for the time it had taken to look into it and the errors when first doing so, which Mr T accepted.

Mr T remained unhappy and brought his complaint to our service for an independent review. Our investigator looked into but didn't think there was anything wrong with the sale of either policy. She said there wasn't sufficient evidence to conclude they were obligatory and she thought they were suitable for Mr T's needs and circumstances at the time.

Mr T didn't accept this. He maintained that he was required to take both policies out to secure the borrowing. He also pointed at other decisions this service had reached as examples as to why his complaint should be upheld.

As no agreement was reached, the case has been passed to me to decide.

What I've decided – and why

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

Having done so, I have reached the same conclusion as the investigator. I know this will be very disappointing for Mr T but let me explain why.

Mr T is frustrated, and it is obviously disappointing, that Aviva are unable to provide more information regarding the sale of the policies. However, they are only expected to hold details of policies which are still in force, not for policies which have lapsed more than six years ago. Therefore, Aviva have done nothing wrong in not having more documentation or evidence than they do from 1994.

Mr T has provided details of other cases this service has decided on, in similar circumstances. Whilst I am aware of them and the decisions reached, each case is decided on its own merits.

The event that Mr T has complained about is insurance intermediation, that is, the marketing, advising and selling of insurance, etc. This did not become a regulated activity until 14 January 2005.

At the point these policies were recommended by the representative of General Accident and sold to Mr T, General Accident may also have been a voluntary member of another former scheme, the MCCB. This gave further limited regulatory requirements when giving advice about term assurance and payment protection policies, where they were ancillary to advice and recommendations for mortgages. I can't be sure if they were a member of this scheme at the time of these sales. Aviva aren't able to tell us and the database of scheme members didn't begin until 1998. However, based on our experience of the time, we believe most lenders and brokers were signed up and I am satisfied on a balance of probabilities they were and the Mortgage Code applied to them.

However, the Mortgage Code related primarily to regulatory rules for mortgage lenders, providing a wide scope for complaints under that scheme. In respect of complaints about IFA's and intermediaries (including the suitability of term assurance and payment protection insurance recommendations as complained about here), the MCCB restricted regulation to direct Mortgage Code breaches.

The only conditions I can therefore consider, are under section 3.2 of the code. The advisor needed to state if it was a condition of the mortgage to take the insurance out. They also needed to give a general description of any costs, fees, or other charges. This includes insurance premiums.

I haven't been provided with anything to conclude that these policies were required, for Mr T to secure the lending. Mr T himself hasn't said that he had to take the policies out. Instead that he was led to believe that it might affect his chances of securing the borrowing if he didn't.

I am also satisfied with the point raised by Aviva, that the advisor who sold these policies did not sell the mortgage or work for the lender. So, I don't believe he could have made them a requirement. Further, we have been provided with a document signed by Mr T at the point of

sale, which says it was to provide a record of the basis of the mortgage. This has *"No"* written, next to *"compulsory insurance".* This again suggests to me that the policy wasn't compulsory and that Mr T knew this.

I can also see that Mr T declined a recommended buyers costs protection policy, which shows he was aware he didn't need to go ahead with all the recommendations. The paperwork we have also shows that a buildings insurance policy was a requirement, which suggests the documents would have said if the DTA and PPI were required. I am further satisfied regarding this, as the policies were recommended some time after the sale of the mortgage. With a referral being given from the mortgage advisor. Because of these reasons, I am satisfied that point one under the Mortgage Code hasn't been broken. I don't believe the policies were required and I don't believe Mr T was told they were.

The next requirement was to make clear the costs, fees and charges (including premiums). I've looked at how these were set out to Mr T. I've seen the DTA policy schedule which clearly sets out an £8.15 monthly premium. This correlates with the statements provided by Mr T. I also have a copy of the ASU PPI schedule and it sets out a monthly premium of £15.60 before tax. Again, this correlates with the debits shown in Mr T's bank statements.

Mr T has said argued that there was commission taken from these premiums and from the sale, which wasn't disclosed, and he believes this constitutes a breach of the code. However, I haven't been provided with anything to show there was any commission or how much it was. Therefore, there isn't sufficient evidence for me to be able to say there was a breach of the second bullet point quoted from the Mortgage Code above. Overall, I think the premiums and charged for both of these policies were clearly set out.

In summary, I don't uphold this complaint on the limited basis that I can consider. I haven't seen enough to safely conclude that there was a breach of the Mortgage Code. I don't believe the policies were a condition of the borrowing and I haven't seen enough to conclude that any fees or charges weren't made clear.

My final decision

My final decision, for the reasons stated above, is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 28 December 2023.

Yoni Smith
Ombudsman