



complaint

This complaint is about a regular premium payment protection insurance policy ('PPI') which was sold in conjunction with a credit card by Lloyds TSB Bank Plc. Mr B (who is represented by a claims management company) recalls the sale taking place in 2002 or 2003. He says the policy was mis-sold because he did not want to take it out but was told he had to have it.

background

The adjudicator who previously considered the complaint noted that:

- A PPI policy appeared to have been sold to Mr B about which a complaint had been made.
- Several requests had been made for Lloyds TSB to provide information about the sale. However, no business file or other information had been provided;

In the absence of this information the adjudicator made a number of assumptions as to the sales process, policy terms, costs and benefits based upon her understanding of Lloyds TSB's products and sales over time. She explained more about her approach in her letter of 24 April 2013.

On the basis of the limited information available (and in the absence of a business file) the adjudicator concluded the complaint should be upheld for the following reasons:

- There was not enough evidence to show it was made clear to Mr B the policy and credit card were separate products. So she was not satisfied Lloyds TSB had made the optional nature of the policy clear to him;
- Nor was there enough evidence to show Lloyds TSB made the costs and benefits of the policy clear to Mr B. Taking into account the information he had provided about his circumstances she felt it unlikely he would have regarded the policy as offering good value if this had been done.

The adjudicator asked Lloyds TSB to confirm, by 16 May 2013 whether it agreed to settle the complaint as proposed, if it would like to make a different offer, or did not agree to the settlement.

The adjudicator explained that after this date we would review the complaint and that an ombudsman may make a final decision. Lloyds TSB was asked to provide any more information it would like the ombudsman to take into account by 16 May 2013.

Lloyds TSB was told an ombudsman could make a decision based on the information available, and it would not be able to submit any more information after an ombudsman's decision.

Lloyds TSB has not responded to this view or provided the information about the complaint we previously requested.

my findings

I have carefully considered all of the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances. I have also taken into account the law and good industry practice at the time the policy was sold.

Our general approach to considering complaints about the sale of PPI can be found on our website. And it seems to me this reflects the relevant issues I need to consider in this case.

The key questions I need to consider therefore are:

- if Lloyds TSB gave any advice or recommendation did it take adequate steps to ensure the product it recommended was suitable for Mr B's needs; and
- did Lloyds TSB give him information that was clear, fair and not misleading so he was put in a position where he could make an informed choice about the insurance he was buying;

If Lloyds TSB did something wrong when selling the policy, I then need to consider whether Mr B would have acted differently if it had not done so.

In the absence of a business file or supporting documentation it is obviously more difficult to come to a clear view on these issues. However, this has been requested from Lloyds TSB and it has not been provided either initially or in response to the adjudicator's view upholding the complaint. So I consider it would be appropriate for me to approach the complaint in this manner:

- A complaint about the sale of a PPI policy has been made and Lloyds TSB has not disputed the policy was sold.
- The complaint seems to me to be credible, and Lloyds TSB has not suggested otherwise.
- Lloyds TSB has failed to provide information about the sale, or to provide any reasonable explanation for not doing so, despite having been afforded that opportunity.
- In the absence of that information the adjudicator based her view on the information available and made assumptions.

Having done so she concluded the complaint should be upheld. I consider the assumptions made to be reasonable (and Lloyds TSB has not challenged these).

- And her conclusions do not appear unreasonable given the limited evidence available. In particular I have seen no clear evidence to show the optional nature of the policy was made clear to Mr B. He says he was told he had to take it out and Lloyds TSB has provided no evidence to show otherwise.
- Nor has Lloyds TSB been able to show clear information was provided to Mr B about the costs and benefits of the policy. And while I do not have full detail of his existing entitlement it does appear he would have received some sick pay if not working. I also understand the benefit offered by this policy was relatively low compared to other similar policies on the market at the time. So I am not clear Mr B would have

thought it represented good value for money if he had understood more about its costs and benefits.

- The adjudicator gave Lloyds TSB a reasonable opportunity to respond to her assessment and to provide its file. It has not provided its file or answered the points made by the adjudicator in her assessment. Nor has it provided any explanation for its failure to provide a business file.

Given the time that has elapsed since Lloyds TSB was first afforded the opportunity to provide its business file, I do not consider it is fair or reasonable to delay the determination of this complaint.

And in the absence of a business file or any other information from Lloyds TSB I do not believe there are grounds for me to depart from the view set out by the adjudicator who previously considered the matter.

It therefore follows that I have decided to uphold Mr B's complaint.

redress

Lloyds TSB will need to put Mr B back in the position he would have been if he had not taken out this PPI policy. He told us the policy ended when his credit card account was closed. So Lloyds TSB will need to:

- A. Carry out a hypothetical reconstruction of the credit card account to find out what the closing balance of the credit card account would have been if Mr B had paid the same monthly payments, but the PPI policy had *not* been added to it.

This will involve Lloyds TSB removing the PPI premiums, any interest that was charged on the premiums and any charges (and interest on those charges) that would not have applied if the PPI had not been added to the account.

Lloyds TSB should then pay Mr B the difference between the closing balance and what the closing balance would have been without PPI.

- B. Pay Mr B interest at 8% per year simple* on any credit balance for any periods when the reconstructed account would have been in credit for the period it would have been in credit.
- C. Pay Mr B interest at 8% per year simple* on the difference between the actual closing balance of their account and the reconstructed closing balance from the date the account closed to the date of settlement.
- D. Set out in writing to Mr B how it has calculated the compensation in A, B and C.

*This part of the compensation may be subject to income tax. The treatment of this part of the compensation in Mr B's hands will depend on whether Lloyds TSB has deducted basic rate tax from the compensation and his financial circumstances. More information about the tax position can be found on our website. Mr B should refer back to Lloyds TSB 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 decision

My final decision is that I uphold this complaint and require Lloyds TSB Bank Plc to provide redress as set out above.

James Park
ombudsman