

## complaint

This complaint is about a credit card payment protection insurance ('PPI') policy. Ms B says Lloyds Bank PLC (trading as TSB) mis-sold her the PPI.

## my findings

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

Lloyds can't confirm the date when the policy was sold. They've said that the account opened in 1996 and it's possible that the PPI was also sold at this time. The first available credit card statement is dated January 2000 and it shows PPI on the account. But it's possible that PPI was also sold when the account opened in 1996. In fairness to Ms B, I've considered that the policy was sold in 1996 and that Lloyds made a recommendation to take PPI - as this places more responsibility on Lloyds.

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 Ms B's case.

I've decided the policy wasn't mis-sold because:

- I haven't seen a copy of Ms B's credit card application as it isn't available given the time that's passed. But I have seen a copy of an example credit card application that Lloyds says is representative of what Ms B would have seen at the time of sale in 1996.

It shows an option to select PPI by ticking a box. As PPI was added to the account, and I've not seen anything to suggest that this application form wasn't used, I think it's more likely than not that Ms B selected the option to take PPI, understanding that she didn't have to.

I've carefully considered what Ms B has said about the sale, but there are contradictions in her testimony. In her PPI questionnaire she has complained that she didn't receive enough information to be aware that PPI was optional. But later, in response to our adjudicator's assessment, she's said that she didn't consent to taking the policy. Given the passage of time, it isn't surprising that she may not remember everything clearly.

PPI also would have appeared on Ms B's monthly credit card statements, and if PPI had been something that she hadn't consented to taking out, I think Ms B reasonably would have questioned this with Lloyds much sooner than she did. But the evidence is that she continued to pay for PPI for a number of years.

So, having carefully considered everything, I think it's more likely than not that Ms B agreed to take PPI, understanding that she had a choice.

I know that will be disappointing for Ms B. But I have to base my decision on the available evidence, before deciding what I think is *more likely* than not to have happened.

- I think Lloyds recommended the PPI to Ms B. This means it had to check that the PPI was right for her – and based on what I've seen of her circumstances at the time, I think that it was. For example she wasn't affected by any of the exclusions to or limits on the PPI cover and she seems to have had a need for the cover.
- It's possible the information Lloyds gave Ms B about the PPI wasn't as clear as it should've been. But she chose to take it out - so it looks like she wanted this type of cover. And it seems like it would have been useful for her if something went wrong. It also looks like it was affordable. So I don't think better information about the PPI would have put her off taking out the cover.
- Which means Lloyds doesn't have to pay back all of the cost of the PPI to Ms B.

But Lloyds will pay back *some* of the cost of the PPI to Ms B because:

- When the policy was sold, Lloyds expected to get a high level of commission and profit share (more than 50% of the PPI premium) - so it should have told Ms B about that. Because Lloyds didn't tell Ms B, that was unfair.
- To put that right, Lloyds has basically offered to pay back the amount of commission and profit share that was above 50% of the PPI premium - and I think that offer is fair in this case.

I've thought about everything Ms B has said - including what she's said about her existing means of making her repayments. In particular - her sick pay entitlement through her employer. I haven't seen evidence to support what Ms B has said about receiving 12 months full sick pay.

I say this because I've seen an email from Ms B's former employer which says "*...our Sickness Policy has only ever been that employees receive 6 months sick pay at full pay and 6 months at half pay*".

In the interest of fairness, I've considered that Ms B was entitled to 6 months full pay, followed by 6 months half pay – as this is what the evidence suggests was more likely to be her entitlement. So, based on this, after six months Ms B's sick pay would have dropped significantly, to 50% pay.

This PPI policy could have paid out for up to 12 months for a successful accident or sickness claim. So I still think that the policy was right for Ms B. Having this policy would also have allowed Ms B the option of not using her existing means to help make her repayments, or the option of using her existing means to help pay for other living expenses.

I've noted that Ms B had limited other means, such as savings, to make her monthly repayments if she was made unemployed. Whilst I've considered what Ms B has said about receiving an income from family members, this income wouldn't be guaranteed. Whereas the PPI policy could have covered her monthly repayments for up to 12 months for an unemployment claim. So I still think that the recommendation was suitable and this policy was right for Ms B.

So these points don't change my decision.

I know that this won't be the answer that Ms B wanted. But I thank her for her time, effort and patience in waiting for an answer on her complaint.

**what the business needs to do**

Lloyds has to pay back to Ms B any commission and profit share it got that was more than 50% of the PPI premium. Lloyds should also pay back to Ms B any extra interest she paid because of that.

Lloyds should re-work the credit card account and pay back to Ms B the difference between what she owes and what she would've owed if the commission and profit share it got hadn't been over 50% of the cost of the PPI. Lloyds should also pay Ms B 8%\* simple interest if Ms B paid off her credit card at some point.

\*Businesses have to take basic rate tax off this interest. Ms B can claim back the tax if she doesn't pay tax.

**my final decision**

The PPI policy wasn't mis-sold – so Lloyds Bank PLC does not have to pay back all of the cost of the PPI to Ms B.

But Lloyds Bank PLC does have to pay back to Ms B any commission and profit share it got that was more than 50% of the PPI premium.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms B to accept or reject my decision before 16 August 2018.

Daniel O'Shea  
**ombudsman**