

complaint

Mr S has complained about a payment protection insurance (“PPI”) policy he bought from Lloyds Bank PLC (“Lloyds”).

background

I issued my provisional decision on 17 December 2018. A copy of my provisional decision is attached and forms part of my final decision.

My provisional decision sets out the background to this complaint. It explains why I provisionally decided the complaint shouldn’t be upheld.

I asked both parties to respond to me by 17 January 2019. Mr S has responded, disagreeing with my provisional decision. Lloyds hasn’t responded.

my findings

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

Mr S disagrees with my provisional decision. He thinks what I’ve said means no consumer who has made a claim for the benefits of a PPI policy can go on to make a complaint about undisclosed commission or profit share. I understand why he may think this, but for the reasons set out in my provisional decision, I disagree.

The Financial Conduct Authority (“FCA”) has set out rules that a business must follow when looking at complaints about PPI. Those rules set out a two-step approach.

The first step was that a business should look to see whether the policy was *mis-sold* and whether the consumer would not otherwise have bought the policy they did.

The second step was that if a business considered that the policy wasn’t mis-sold, did the level of undisclosed commission (and profit share) received by the business create an unfair relationship between the consumer and the business. If it did, the business needed to put that right.

But, and importantly, the rules say that a business doesn’t need to consider the commission (and profit share) charged (step 2) if it upheld the consumer’s complaint that PPI had been mis-sold (step 1).

In other words, if a business finds a consumer wouldn’t have bought PPI at all and offers to put things right on that basis, it doesn’t need to go on to look at any complaint about commission.

So when Lloyds looked at the sale of the policy in 2011 it concluded the PPI was mis-sold and Mr S would not have bought it. At that point it worked out compensation for the mis-sale to put Mr S, as far as possible, in the position he would have been in if he had never taken out the PPI. This meant that compensation also put him in the position he would have been in if he had not paid anything for PPI, including commission to the date of Lloyds’ calculation.

Mr S had made two successful claims under the policy that paid out more than he had paid for PPI And Lloyds had set the claims off against the compensation due for the mis-sale. As I explained in my provisional decision, I think that was a fair approach to for it to take.

But this meant Lloyds didn't need to consider whether there was an unfair relationship as it had already upheld Mr S' complaint about the sale of PPI in 2011. Had it thought in 2011 that PPI hadn't been mis-sold, it would have had to consider whether there was an unfair relationship. And that would have been considered regardless of whether a claim had been made under the policy.

Lloyds, in Mr S's case has followed the rules and guidance set out by the FCA. I've thought about whether there is anything about Mr S' complaint that means Lloyds should do anything different to answer his complaint. But I don't think there is. I think what Lloyds has done is a fair way to resolve the complaint, so I am not intending to tell it do anything further.

my final decision

For the reasons I've explained above and in my provisional decision, I don't uphold Mr S's complaint and Lloyds Bank PLC doesn't need to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 March 2019.

Matthew Horner
ombudsman

Copy of Provisional Decision

complaint

Mr S has complained about a payment protection insurance ("PPI") policy he bought from Lloyds Bank PLC ("Lloyds").

background

In March 2018 Mr S contacted Lloyds to complain about the level of undisclosed commission (and profit share) received by the business on his PPI policy.

Lloyds explained to Mr S that it had already looked into the sale of his PPI in September 2011.

Lloyds enclosed a copy of its response to Mr S from 2011. In this letter Lloyds say that Mr S had two successful claims for unemployment totalling £5,387.12. And this was more than he had paid for the PPI, which was £2,673.72. So Lloyds considered that as Mr S's claim amounts were greater than his PPI compensation – he wasn't due anything.

Lloyds' letter to Mr S in 2018 explained that it had already fully upheld his complaint. So Lloyds said it considered it did not need to do anything further in relation to the amount of commission and profit share it received for the PPI policy.

Unhappy, Mr S brought his complaint to our service. Mr S considered that the claims he had would have been paid out in any event – even if there was no commission charged. So Mr S feels he should still be entitled to receive any commission he was charged unfairly.

Our adjudicator looked at Mr S's complaint and thought Lloyds had acted fairly. He explained that Mr S complained to Lloyds in 2011 that the policy was mis-sold. Lloyds investigated this and felt it didn't need to pay Mr S any compensation because the value of his claims was more than he'd paid for PPI. Our adjudicator agreed that this was fair.

Our adjudicator also thought Lloyds didn't need to look at how much commission and profit share it had received as the Financial Conduct Authority ("FCA") rules and guidance said this wasn't necessary if the consumer complained that the policy was mis-sold and the business upheld the complaint.

Mr S disagreed with our adjudicator. He said that he did not make a complaint about the mis-selling of PPI in 2011. Mr S says he made a complaint in 2011 around an unemployment claim that had been made previously on the PPI policy and had not been fully settled. Mr S explained that our service looked into his concerns around the unemployment claim.

Mr S also reiterated his point that the claims he had would have been paid out in any event – even if there was no commission charged. So Mr S remained of the opinion that he should still be entitled to receive any commission that he had been charged unfairly.

As the matter hasn't been resolved it's been passed to me for a decision.

my provisional findings

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

what happened in 2011?

I can see that Mr S did complain about the concerns he had with the unemployment claim he had under his PPI policy. I can see that a complaint was looked at by this service against the insurer of the PPI policy. I have looked at this complaint and the correspondence on the file.

From looking at the correspondence I can see that Mr S submitted to this service his 'statement of case'. This document is dated May 2011 and is addressed to the insurer.

Within this document Mr S states:

"...I am requesting an investigation in to whether there has been a breach of contract relating to my claim under the Payment Protection Scheme – and whether I was mis-sold Payment Protection on my Lloyds TSB Visa Card"

Mr S further explained that:

"I was not aware that this Insurance only lasted for one year, and at the end of that one year I would never be able to make a claim under this policy again. Had I known, I would not have taken this insurance.

I therefore believe that this insurance has been mis-sold and the whole claim mis-handled."

This correspondence was received by the insurer and I can see that in response to Mr S, and on more than one occasion, the insurer explained to Mr S that if he had any concerns about the sale of his PPI policy then that would need to be addressed by Lloyds. It explained to Mr S that as the insurer it would only look at his concerns about the unemployment claim.

I've seen that Lloyds, not the insurer, wrote to Mr S setting out its response – this looks like the response to a complaint that PPI had been mis-sold. Given that Mr S had shortly before written to the insurer saying that he thought PPI was mis-sold (with reasons) and the insurer told him to complain to Lloyds, I think it's most likely that's what he did. I think Mr S raised his concerns to Lloyds that his PPI policy had been mis-sold, and that was what generated Lloyds' response about Mr S's PPI policy in September 2011.

did Lloyds need to pay Mr S any compensation in 2011 having upheld his complaint?

Lloyds accepted that the PPI policy was mis-sold. So it needed to try to put Mr S in the financial position he would have been in if he hadn't taken it out (so far as is possible).

With a credit card PPI policy like Mr S's, this generally means refunding any premiums he was charged, and any historic interest or fees and charges caused by the PPI. Finally, it needs to compensate Mr S for any time he was out of pocket. To do all of this, businesses usually need to reconstruct the consumer's account on a month-by-month basis.

But, and importantly here, if Mr S hadn't had PPI, he wouldn't have been able to make his claims.

So I think it's fair for Lloyds to deduct the amount he received when he made his claims from his PPI compensation. And because Mr S's claims totalled a lot more than his PPI compensation, Lloyds didn't need to pay him anything.

In summary, I think Lloyds correctly dealt with the complaint that was brought to it by Mr S in 2011.

does Lloyds need to anything more?

The FCA provided guidance and rules on how businesses should approach compensation for PPI when a consumer complains about the sale of PPI. It referred to a two-step approach.

The first was that a business should look to see whether a policy was mis-sold and whether the consumer would not otherwise have bought the policy. The second was that if a policy wasn't mis-sold, did the level of undisclosed commission (and profit share) received by the business create an unfair relationship between the consumer and the business.

But the rules say that a business doesn't need to consider the commission (and profit share) charged if it upheld the consumer's complaint that PPI had been mis-sold. In other words, if a business finds a consumer wouldn't have bought PPI at all and offers to put things right on that basis, it doesn't need to go on to look at any complaint about commission.

So here, I'm satisfied Mr S made a complaint about a mis-sale of PPI, which Lloyds investigated and upheld in 2011. But because Mr S had claimed more under the policy than what he had paid for it – he wasn't owed anything.

And because Lloyds had investigated the sale of the policy and upheld it in 2011 (albeit with no compensation due to Mr S), Lloyds didn't have to go on (in 2018) and consider whether the relationship was unfair.

I appreciate that Mr S feels that his unemployment claims would have paid out in any event – so he still feels that he should be entitled to any unfair commission that may have been charged. I understand what Mr S is saying here. But it is important to note that Lloyds had to, in the first instance, look at whether the policy was mis-sold. It did so, seven years ago and concluded that the policy was mis-sold. Had Mr S not claimed, Lloyds would have refunded everything Mr S had paid towards the policy. But as Mr S had successfully claimed under the policy, outweighing what he had paid towards the policy, he wasn't entitled to be paid any compensation.

If Lloyds, in 2011, had concluded that the policy wasn't mis-sold – then in 2018 when Mr S complained about the level of undisclosed commission and profit share it received – Lloyds would have been required to look into it.

But I don't think it's fair to say Lloyds must now do so when, for the reasons I've said above, it's already properly considered the sale of the policy.

my provisional decision

For the reasons set out above, I am intending to not uphold Mr S's complaint. And I am of the provisional opinion Lloyds Bank PLC doesn't need to do anything further.

I invite both parties to respond to my provisional decision by 17 January 2019. I will then consider any responses I receive and issue my final decision.

Matthew Horner
ombudsman