

complaint

This complaint is about a single premium PPI policy taken out with a business loan in February 2008.

At the time the policy was taken out, Mrs F was the director of B, a limited company. She took out a business loan in order to buy stock for the company and make improvements to her business premises.

background

I issued my provisional decision in April 2014, a copy of which is attached and forms part of this final decision. In my provisional decision, I explained why I was minded to uphold B's complaint. I invited all parties to let me have any further submissions before I reached a final decision. The business has agreed to settle B's complaint in line with our approach.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. As neither party has provided any further evidence or arguments for consideration and as the business has already made an offer in settlement of the complaint, I see no reason to depart from the conclusions set out in my provisional decision. It follows that I uphold this complaint.

my final decision

My final decision is that I uphold this complaint and make an award against Lloyds Bank Plc. I require it to settle the complaint in the terms set out below in the provisional decision.

Under the rules of the Financial Ombudsman Service, I am required to ask B to accept or reject my decision before 8 June 2015.

Anthony Harrison
Ombudsman

copy of provisional decision

complaint

B, a limited company, says that Lloyds Bank PLC (trading at the time as Lloyds TSB) was mis-sold a payment protection insurance (PPI) policy.

background

This complaint is about a single premium PPI policy taken out with a business loan in February 2008.

At the time the policy was taken out, Mrs F was the director of B, a limited company. She took out a business loan in to buy stock for the company and make improvements to her business premises.

The adjudicator hasn't upheld the complaint. The adjudicator couldn't fairly say that the business didn't make it clear that the policy was optional; that the policy was suitable for B and that the costs of the policy were made clear.

B disagrees with this view and so the complaint has been passed to me.

my provisional findings

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

The PPI policy came about following a meeting between Mrs F and an advisor from the business who attended her shop premises.

I appreciate that Mrs F has said that she felt "pushed" into taking out the policy by her bank manager but given my provisional findings on a different point below I'm currently not intending to make any findings on this issue.

There's no dispute that the sale was recommended. That much is made clear from the "GIMS" form (a demands and needs type form) which expressly recommended the policy to B on page three.

So I'll proceed on the basis that the policy was recommended.

In those circumstances, the business had to make sure that the policy was suitable for B.

In this case, the assessment seems to have been limited to five checks on the GIMS form, three of which concerned eligibility while the remaining two concerned health. And so it wasn't the most thorough assessment of B's circumstances.

But, in any event, I have to decide the bigger question of whether the policy was suitable for B.

The answer to that lies in the particular circumstances of B.

This was a single shop rather than a chain or franchise providing a fairly niche and particular service.

Mrs F has told us that she was the only full time worker on the premises. She was not working in partnership with anyone else in the company.

To make a claim under the accident and sickness part of the policy, Mrs F, as the nominated person, would've had to have suffered:

“any accident, sickness or disease which occurs after the start date which results in a nominated person being totally unable to carry out the duties of their normal work and not doing any other work, as confirmed by a doctor or specialist.”

The concern, in the context of this case, is that by requiring a total inability to do normal work (defined as the work immediately before the accident) the bar was being set very high to make a claim.

It created a potentially unfair situation in this case where Mrs F could've been disabled to a point where she was unable to carry out her specialised services which generated income but was still able to carry out the other work that would've made up her regular duties such as answering the phone, making orders, taking bookings etc. In that situation, it would've been difficult to describe her as totally unable to carry out the duties of her normal work. And so the over-reaching nature of the term would've made it more difficult for Mrs F to make a claim under the policy.

So at this stage I don't think the policy was suitable for B's particular circumstances.

Not only was the business required to make sure the policy was suitable for B, it also had to make sure the information it provided was clear, fair and not misleading.

The term explaining accident and sickness was part of a “definitions” section in a densely worded seven page policy document. I've not seen any evidence that this particular definition was brought to Mrs F's attention at the meeting. There was certainly nothing on the GIMS form asking about the nominated person's particular work duties or anything of that nature. Without such prompts the risk was that Mrs F wouldn't have necessarily picked up on the potential significance of this term in the policy – especially when her main focus would've been getting the loan itself.

But even if those information needs had been met, for much the same reasons I've found the policy to be unsuitable, I don't think B would've gone ahead with the policy. Paying for a policy for which a key part of the cover was difficult to claim on is not something that would've been attractive to B – especially where the main point of having the policy was to cover accident and sickness.

And so I currently think that the policy was mis-sold.

fair compensation

I'm minded at this stage to award compensation along the following lines:

In this case, Lloyds Bank PLC should:

- (A) calculate, and pay B the amount of the net payments B made in respect of the PPI (including any interest and charges) by comparing:
- the payments actually made;
 - the payments which would have applied if B had taken the loan without PPI; and
 - add interest on each of these net payments at the rate of 8% per year simple[†] from the date of each payment to the date the compensation is paid; and
- (B) set out in writing for B the details of the calculations under (A).

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

B should refer back to the business if it's unsure of the approach the business 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 provisional decision

For the reasons set out above, I'm currently intending to uphold this complaint. Subject to any further comments and evidence that I receive by 26 May 2015, I intend to issue a final decision along the above lines.

Anthony Harrison
ombudsman