

## **complaint**

This complaint concerns the sale of a regular premium payment protection insurance (“PPI”) policy taken out in conjunction with a credit card in 2004. Mr K says Lloyds Bank PLC (“Lloyds”) mis-sold the policy to him, citing a number of reasons. For the avoidance of doubt, and in line with Mr K’s instructions, it is only the above issue that I am considering in this final decision and not any other issues Mr K might have, for example issues around any account charges that might have been levied to his account.

## **background**

Our adjudicator recommended that the complaint should not be upheld. Briefly she said that in her view Mr K:

- was eligible for the policy
- understood the policy was optional
- would not have been caught by any of the important limitations in the policy
- would not have acted any differently, that is not taken the policy out, had clearer information about the policy’s costs and benefits been provided

Mr K disagreed with the adjudicator’s findings and asked for the matter to be referred to an ombudsman for review, as he is entitled to do.

## **my findings**

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

Mr K’s representative has made substantial submissions which I have read and considered in their entirety. I hope the fact that I do not respond in a similar manner will not be taken as a discourtesy; as an informal dispute resolution service, we are tasked with reaching a fair and reasonable conclusion with the minimum of formality. In doing so it is not necessary for me to respond to every point made, but concentrate on the crux of the issue.

Mr K’s representative has also made various arguments concerning the Financial Services Authority’s Principles and Policy Statement 10/12 (PS 10/12) whose provisions became complaint handling rules and guidance for businesses under DISP App 3.

My role is to determine complaints by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. I am required to take into account – where relevant – law and regulations; regulators’ rules, guidance and standards; codes of practice; and good industry practice at the relevant time.

I have taken account of the Principles and DISP App 3 in this case and, specifically, where there has been a failing on the part of Lloyds. But having considered all the evidence I have reached the conclusion it is unlikely Mr K would have acted differently but for those failings.

The questions I need to consider in a case like this are:

- whether Lloyds gave Mr K information that was clear, fair and not misleading in order to put him in a position where he could make an informed choice about the insurance he was buying,

- whether, in giving any advice or recommendation, Lloyds took adequate steps to ensure that the product it recommended was suitable for his needs.

If there were shortcomings in the way in which Lloyds sold the policy, I then need to consider whether Mr K is worse off as a result; that is, would Mr K have done something different – i.e. not taken out the policy – if there had been no shortcomings.

Lloyds has said that Mr K purchased cover when he completed and returned a postal application for a credit card and no recommendation was made. Mr K cannot recall in what circumstances the cover was sold or whether Lloyds made a recommendation.

Having considered both parties' submissions, including a copy of the application form signed by Mr K, I am satisfied that the sale took place in the manner Lloyds has described and no recommendation was made. So Lloyds's obligation was to ensure that Mr K's information needs were properly met at the point of sale; in particular, to provide information that was clear, fair and not misleading in order to put him in a position where he could make an informed choice. It would have been for Mr K to assess that information and make that choice, based upon *his* assessment of *his* needs at the time.

Mr K says that cover was added without his knowledge or consent. I accept it is *possible* that cover was added without his knowledge or consent but the documentation from the time of the sale would indicate that Mr K was given an option to purchase cover and he decided to do so.

The credit agreement, which has been signed and dated by Mr K, says at section four "Select your additional benefits"

**Payment Protection Cover (One box must be ticked)**

*For your additional piece of mind of knowing that you can continue to meet your minimum credit card payments even if you can't work due to accident, sickness or unemployment you can take out Payment Protector Cover".*

<i>Tick Yes to take out Payment Protection Cover and protect your payments</i>	Yes <input type="checkbox"/>	<i>If you do not wish to protect your payments, tick No</i>	No <input type="checkbox"/>
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In this case Yes  has been ticked so I am satisfied that it is more likely than not that Mr K was presented with a choice and he chose to purchase cover.

So, in summary, I am not persuaded there is sufficient weight of evidence for me to safely conclude that cover was added without Mr K's knowledge or consent.

I have not seen any of Mr K's statements but in my experience PPI premiums are recorded on statements issued by Lloyds where an outstanding balance exists. So, having seen no evidence to the contrary, it is my understanding that the deduction of the policy premium was shown on Mr K's credit card statements for many years before he first raised his concerns with Lloyds in 2012. So I am not persuaded I can conclude the cover was just added without his knowledge because had it been I would have expected him to have queried the matter before he ultimately did.

Clearly, I cannot be certain how much Mr K understood about the policy at the time. Nevertheless, taking into account the policy benefits, the likely cost of cover, and the information Mr K has given us about his broader circumstances at the time of the sale, I am not persuaded I can safely conclude that if Mr K had been properly informed, he would have acted differently (that is, not taken out the policy). I say so for the following reasons:

- Mr K appears to have been eligible for the plan, apparently in good health and employed, so he was not affected by any of the potentially significant limitations or exclusions affecting the plan, such as those relating to pre-existing medical conditions or unusual employment terms that might have made it poor value for him.
- Mr K, in applying for the credit card, was assuming a new and additional financial commitment. He has confirmed that in the event he was unable to work as a result of an accident or sickness he was not entitled to any sick pay benefits from his employer. Therefore I consider Mr K had a need for the cover provided by the policy.
- Mr K said he had other ways of making his repayments in the event he was unable to work as a result accident, sickness or redundancy. But I am not persuaded that these other provisions were so comprehensive that he would have been put off the policy.
- The cost of the policy was in the region of 79 pence per £100 of outstanding balance on the credit card account for a monthly benefit of 5% of that balance, payable for up to 11 months, followed by the clearance of the remaining outstanding balance in month 12, per claim. As such, the cost of the policy in relation to the actual monthly benefit payable was competitive with many alternatives available elsewhere, and would not, in my view, of itself, have made the policy appear unattractive to Mr K.

Mr K's representative has made submissions in relation to commission payments. The only requirements in the industry codes at the time of this sale were to disclose commission if the intermediary was acting on behalf of the consumer and the consumer asked about commission. It is far from certain in this case that Lloyds was acting on Mr K's behalf or that it owed him any fiduciary duty and I have not seen any evidence that Mr K asked about commission. Therefore Lloyds would not have been obliged to disclose any commission, if it received any.

But even if I found that a fiduciary duty did exist, I am not persuaded I could fairly conclude that commission disclosure would have been material to Mr K's decision making at the time, and mean that he would not have gone ahead with a policy that he was otherwise happy with.

So in summary I am satisfied that because Mr K had a need and because he was not affected by the exclusions, and because the policy provided a reasonable benefit at a competitive cost, I find he would have gone ahead anyway if he had been better informed.

### **my final decision**

For the reasons set out above I do not uphold Mr K's complaint or make any award against Lloyds Bank PLC.

Peter Cook  
**ombudsman**