

complaint

Mr D says that Lloyds Bank PLC (trading as Lloyds TSB) mis-sold him a payment protection insurance ('PPI') policy.

background

I issued my provisional decision in July 2018, a copy of which is attached and forms part of this final decision. In my provisional decision I explained why I wasn't intending to uphold Mr D's complaint. I asked everyone to send me any further comments and information before I reached a final decision.

Mr D responded with some additional comments.

my findings

I've re-considered all the evidence and arguments sent to us to decide what's fair and reasonable. As I've not received any new evidence, I've reached the same conclusions I reached in my provisional decision, for the same reasons.

Mr D's additional comments don't affect the outcome of this complaint.

what the business needs to do

Lloyds will pay back *some* of the cost of the PPI to Mr D 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 Mr D about that. Because Lloyds didn't tell Mr D, 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.

Lloyds Bank PLC has told us that it recalculated its initial offer as there was an issue with the first calculation. It now needs to pay Mr D the outstanding commission and profit share it got that was more than 50% of the PPI premium – if it hasn't done so already.

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

Lloyds should re-work the credit card account and pay back to Mr D the difference between what he owes and what he 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 Mr D 8%* simple interest if Mr D paid off his credit card at some point.

*Businesses have to take basic rate tax off this interest. Mr D can claim back the tax if he doesn't pay tax.

my final decision

For the reasons I've explained in my provisional decision, I don't uphold Mr D's complaint. But Lloyds Bank PLC has to pay back to Mr D any commission and profit share it got that was more than 50% of the PPI premium – that it hasn't already paid back.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 30 September 2018.

Daniel O'Shea
ombudsman

copy of provisional decision

complaint

This complaint is about a credit card payment protection insurance ('PPI') policy taken out around 1994. Mr D says Lloyds Bank PLC (trading as Lloyds TSB) mis-sold him the PPI.

my provisional findings

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

Due to the time that's passed since this sale took place, there's very little documentary evidence available. This isn't surprising considering that the sale was over 20 years ago. In situations like this I've to decide what I think is more likely than not to have happened –based on the available evidence.

Mr D thinks he might have applied for this policy by post. Lloyds don't know how the policy was sold. I've also considered that the policy was sold following a postal application. As I think the policy was sold via a postal application without anyone from Lloyds present, I think it's unlikely that a recommendation was made to take PPI, as generally, postal sales don't involve a discussion between the adviser and the applicant.

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 Mr D's case.

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

- Lloyds have shown us a copy of Mr D's credit card application. It's not of particularly great quality, but mainly legible and, on balance, I'm satisfied that it's relevant to this sale. I say this because I can see the date of 1994 which is when the card and PPI opened and I can also see some of Mr D's personal details handwritten on the form.

In the section for PPI, there are two options. One to select PPI, and one to decline it. There's a tick beside the option to take PPI and Mr D has signed the form. So I think this indicates what Mr D wanted.

On balance, I think Lloyds made it clear that Mr D didn't have to take out the PPI and he chose to take it out – although I can understand why he may not remember this. I haven't seen evidence to support what Mr D has said about being lead to believe that PPI was compulsory.

- Lloyds didn't recommend the PPI to Mr D so it didn't have to check if it was right for him. But it did have to make sure Mr D got the information he needed to decide if it was right for him.
- It's possible the information Lloyds gave Mr D about the PPI wasn't as clear as it should've been. But he chose to take out the PPI - so it looks like he wanted this type of cover. Based on what I've seen of his circumstances at the time it doesn't look like he was affected by any of the exclusions to or limits on the PPI cover - so it would have been useful for him if something went wrong. It also looks like the PPI was affordable. So I don't think better information about the PPI would have put him off taking out the cover.
- Which means Lloyds doesn't have to pay back all of the cost of the PPI to Mr D.

But Lloyds will pay back *some* of the cost of the PPI to Mr D 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 Mr D about that. Because Lloyds didn't tell Mr D, 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 Mr D has said - including what he's said about the policy not being right for him as he was self-employed. But when I've considered the nearest relevant policy document, I don't think it would have been difficult for Mr D to make an unemployment claim.

I've also considered what Mr D has said about not needing the policy because of a tax refund he says he received each year. No further details have been provided about this, but this PPI policy would have paid out in addition to Mr D's existing means and likely lasted for longer, so I still think he could have found the policy useful.

Mr D has said he wasn't told he could shop around for PPI. But Lloyds weren't obliged to tell him about other policies that other businesses sold. And, as he paid for this policy by a monthly premium that appeared on his monthly credit card statements, he could cancel it at any time if he changed his mind and no longer wanted this policy and take out a policy with another provider.

So these points don't change my decision.

what the business needs to do

Lloyds Bank PLC has told us that it recalculated its initial offer as there was an issue with the first calculation. It now needs to pay Mr D the outstanding commission and profit share it got that was more than 50% of the PPI premium – if it hasn't done so already.

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

Lloyds should re-work the credit card account and pay back to Mr D the difference between what he owes and what he 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 Mr D 8%* simple interest if Mr D paid off his credit card at some point.

*Businesses have to take basic rate tax off this interest. Mr D can claim back the tax if he doesn't pay tax.

my provisional decision

For the reasons I've explained, I currently don't intend to uphold Mr D's complaint but I do intend to tell Lloyds Bank PLC to pay back to Mr D any commission and profit share it got that was more than 50% of the PPI premium – that it hasn't already paid back.

If either Mr D or Lloyds Bank PLC have anything further to add, they should do so by 30 August 2018. I'll then reconsider the complaint.

Daniel O'Shea
ombudsman