

## **complaint**

This complaint concerns the sale of a regular premium payment protection (“PPI”) policy sold by Lloyds Bank PLC, formerly Lloyds TSB (“Lloyds”) in connection with a credit card in 2003.

Mr A complains that the policy was mis- sold.

## **background**

Mr A applied for his credit card at a meeting in branch in 2003. At the same time he was sold a PPI policy. Mr A says he was mis-sold the PPI policy as he did not need it. He says he was advised that it was normal procedure when applying for a credit card to include a PPI policy.

Mr A has also told us that as he was self-employed, he did not believe he should have been sold the insurance as it was unsuitable for him.

An adjudicator has upheld Mr A’s complaint on the basis that he was self-employed and the circumstances in which Mr A could make an unemployment claim were quite limited. If this had been properly pointed out the adjudicator concluded that Mr A would have not taken the policy.

Lloyds has not responded to this view and therefore the complaint has been referred to an ombudsman to make a final decision.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. In doing so I have taken into account the law and good industry practice at the time the policy was sold.

It seems to me that the relevant considerations in this case are materially the same as those set out on our website, and that the key questions I need to consider, therefore, are whether:

- Lloyds gave Mr A 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; and whether
- In giving any advice or recommendation, Lloyds took adequate steps to ensure that the product it recommended was suitable for Mr A’s needs.

If I conclude that Lloyds did not do this, I still need to be satisfied that Mr A would have acted differently as a result of any failings and would not have taken out the insurance.

## the basis of the sale

Both parties are in agreement that this was an advised sale. Lloyds therefore needed to ensure that the policy was suitable for Mr A’s personal circumstances and also that the information provided to Mr A was clear, fair and not misleading in order that Mr A could make an informed choice about the policy he was buying.

Mr A in his complaint states that he thought it was normal procedure to include the policy on his application for credit, from which I infer that he may be saying that it wasn’t made clear to

him that the policy was optional. The adjudicator has not considered this aspect of the complaint but I do not need to make a finding on this as I have identified other shortcomings in the sale which lead me to conclude that the complaint should be upheld.

#### was the policy suitable?

Mr A says that he did not need the policy and it was unsuitable for his needs as he was self-employed. Lloyds say that the policy was suitable and have referred to a particular policy booklet which they say would have been used at the time.

I have considered the PPI policy which Lloyds say was applicable at the time of the sale and I am persuaded that this particular policy was unsuitable for Mr A.

I say this because:

- Mr A had been working on a self-employed basis for many years. Having reviewed the policy terms I am persuaded that Mr A would have been caught by the terms relating to self-employment. Whilst a self-employed person would be able to make a claim, the particular circumstances in which Mr A could make a claim for unemployment under those terms were relatively limited, and the term, therefore onerous.
- The *policy document* defines *self-employed* and from the document I have seen the policy states that in relation to unemployment; *“No benefit will be paid for: Unemployment if you are self-employed, unless you become unemployed due to the involuntary insolvency of your business and you provide evidence of notification to the Inland Revenue of cessation to trade”*
- I am persuaded that meeting this definition required a degree of permanence which made it a more difficult standard to reach than those who were employed. So for Mr A to make a claim under the policy, his business would have had to have been insolvent, leading to its closure and the formalisation of that closure. He would not have been able to close and claim on the basis that the business could not support his reasonable living expenses – but only in a much more limited scenario. Mr A was self-employed at the time the policy was taken out and it is my view that this term would have been significant to him and made the policy unsuitable for his particular circumstances.
- Although I am mindful that Mr A would have received accident and sickness cover under the terms of the policy even if he was self-employed, it is my view that Mr A would have considered that the policy provided him with a limited benefit especially as he would have found it more difficult to benefit from unemployment cover.
- Therefore, If Mr A had been suitably advised then he would have known that a significant part of the PPI policy was unlikely to have been of use to him. I am therefore persuaded on balance that he would not have taken it out because it is unlikely he would have considered the policy to be good value to him.

#### Information provided to Mr A

Turning to the information Mr A received about the policy at the time, I cannot be certain what information was provided to Mr A at the meeting to take out the PPI policy and how the self-employed terms were presented to Mr A during the discussions at the time of the sale.

I cannot be sure that all the necessary information was made sufficiently clear to Mr A but I do not consider I need to determine this. Because even if Mr A had been provided with clearer information about the policy for the same reasons I have concluded the policy was unsuitable for Mr A (summarised above) I do not think Mr A would have gone ahead with the policy.

It follows therefore that I find that Mr A's complaint should succeed.

fair compensation.

It is my understanding that the policy has been cancelled and that the credit card is no longer running. Therefore, Mr A should be put back in the position he would have been in now if he had taken out the credit card without the PPI policy. So Lloyds should:

- A. Carry out a hypothetical reconstruction of the credit card account to find out what the closing balance of the credit card account would have been if Mr A had paid the same monthly payments, but the PPI policy had *not* been added to it.

This will involve Lloyds removing the PPI premiums, any interest that was charged on the premiums and any charges (and interest on those charges) that would not have applied if the PPI had not been added to the account.

Lloyds should then pay Mr A the difference between the closing balance and what the closing balance would have been without PPI.

- B. Pay Mr A interest at 8% per year simple<sup>†</sup> on any credit balance for any periods when the reconstructed account would have been in credit for the period it would have been in credit.
- C. Pay Mr A interest at 8% per year simple<sup>†</sup> on the difference between the actual closing balance of his account and the reconstructed closing balance from the date the account closed to the date of settlement.
- D. Set out in writing to Mr A how it has calculated the compensation in A, B and C.

<sup>†</sup> I understand Lloyds is required to deduct basic rate tax from this part of the compensation. Whether Mr A needs to take any further action will depend on his financial circumstances. More information about the tax position can be found on our website.

Mr A should refer back to Lloyds if he is unsure of the approach it 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 final decision**

For the reasons stated above, I determine the complaint in favour of Mr A and require Lloyds Bank PLC to pay fair compensation to Mr A in accordance with the relevant calculation of redress I have set out within this decision.

Nicola Woolf  
**ombudsman**