

complaint

This complaint is about mortgage payment protection insurance (PPI) taken out in 1996. Mr and Mrs H say Lloyds Bank PLC, trading at the time as TSB, mis-sold them this PPI. To keep things simple, I'll refer mainly to "Lloyds" throughout this decision.

I'm very sorry this complaint has taken so long to reach this stage, although I see we've previously communicated with a claims management company which has been representing Mr and Mrs H. Nevertheless, I do appreciate it's been quite a wait, and I'd like to assure Mr and Mrs H that I have read through everything they've submitted with great care. I've also looked at the latest information Mr H submitted; I understand the points being made and I thank him for taking the time to diligently set them out.

background

One of our adjudicators previously looked into the complaint and they told Mr and Mrs H's representative they didn't think we should uphold it. They disagreed with the adjudicator's opinion but they didn't raise any new or additional points at this stage but repeated the same complaint points and arguments they'd previously made.

As the complaint couldn't be resolved informally, it has now been passed to me for a final decision.

my findings

Although I have only included a summary of the complaint, I have read and considered all the evidence and arguments available to me from the outset, in order to decide what is, in my opinion, fair and reasonable in all the circumstances of this complaint.

When considering what is fair and reasonable, I am required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time. We've set out our general approach to PPI mis-sale complaints on our website and published some 'example' final decisions that set out in detail how these relevant considerations may apply to PPI sales like Mr and Mrs H's. I haven't set out that detailed information here, but I've taken into account all relevant considerations in making a decision.

I'm sorry to disappoint Mr and Mrs H, but having considered the case, I've decided not to uphold the complaint and I've summarised my reasons below.

did Lloyds properly obtain Mr and Mrs H's consent?

The first thing I looked at was whether Mr and Mrs H gave their consent to add PPI to their mortgage. Although it was a joint mortgage, only Mr H was covered by the PPI. So I'm afraid certain complaint points made on their behalf about Mrs H not being eligible for the PPI aren't relevant in this context. As only Mr H was protected, I've looked at *his* eligibility. Mrs H was never named on the PPI.

Similarly, their representative made a large number of complaint points, many of which as I explain later, I consider to be 'general' and not related specifically to Mr and Mrs H's situation. However, I think it was clear enough at the time of this sale in 1996 that Mr and Mrs H didn't have to take out the PPI if they didn't want to. I say this because I see we still have a copy of the mortgage application form. There was a section on this about PPI

("MortgageSure") and I note the box for this was ticked. Mr and Mrs H both signed the application with a tick in the relevant box on 14 June 1996. I consider this to be strong and reliable evidence that they wanted to have this type of cover, selected only for Mr H.

I see they were also given or sent a Mortgage Offer. This is an important document which I feel Mr and Mrs H would have wanted to read carefully. It too said they'd chosen PPI and it set out the monthly cost of £16.30 together with the other mortgage costs. I think Mr and Mrs H would have also filled out a direct debit instruction (or similar) to authorize the payment(s) to leave their bank account each month.

In summary, I think there's plenty of solid and reliable evidence here showing they wanted to have PPI, they knew it was optional, and that Lloyds correctly obtained their consent.

was the PPI suitable?

Lloyds probably recommended the PPI to Mr and Mrs H as part of an 'advised' sale. It therefore had a duty to check that the PPI was right for them. I consider this to be the crux of Mr and Mrs H's complaint because they make several points about the PPI not being something they needed. I understand the points being made.

However, as I've said, they wanted the PPI and they could easily see they had a choice from the documents they were presented with. Mr H appears to have been eligible for the cover and not caught by any of the main exclusions we typically see in these policies. As our adjudicator previously explained, we no longer have access to the actual policy rules, because they relate to an 'old' policy form from the mid-1990s. But I've seen some policy documents from near to the 1996 period and I've made some reasonable assumptions about what the rules and limitations of the cover would have been like.

Those representing Mr and Mrs H said his sick pay with his work extended beyond 12 months at the full rate. However, I don't think this is right. We see very few cases where the provision of sick pay cover is so generous. And I'm familiar with Mr H's occupation and the general benefits he would have enjoyed. Whilst I accept he would have had fairly good protections in place, his sick pay would have most likely been six months at the full rate and six months half. We see more generous provisions in only a select few professions as a rule, and Mr H's representative submitted no evidence to the contrary.

However, even accepting that he had 'good' job-related protection, I think the PPI was still suitable. It was a mortgage secured on his and Mrs H's home and the consequences of them not being able to keep up payments could have been serious. So, I think the PPI was suitable and it being recommended to them wasn't unreasonable.

Also, there was nothing obvious about Mr B's occupation which would have made it difficult for him to make a successful claim on the policy, in my view. He hasn't told us about any pre-existing medical conditions that could have affected his ability to claim and there were no additional restrictions on cover for mental health or back problems that I'm aware of. Again, the points made on Mr and Mrs H's behalf about possible mental health limitations on the policy, for example, are mere generalised ones.

after our adjudicator issued their view

After the adjudicator's view was issued, Mr and Mrs H subsequently mentioned some health matters in relation to Mr H which appear to *post-date* the sale. I'm sure these issues will have been of concern to them and it's certainly not my intention to under-estimate their impact. But I'm afraid I don't find that they affected whether or not Mr and Mrs H would have

taken out the PPI policy in the first place. My assumption is that by being *after* the PPI sale, Mr H's apparent health deterioration wasn't known about and so I cannot take this into account as affecting whether or not the sale would have gone ahead in 1996 because the policy excluded some pre-existing health conditions.

Mr H also strongly put forward some further points, asserting the overall vulnerability of his and Mrs H's family situation at unspecified points in time – in so much as being a family with young / dependent children. But in my view this demonstrates that having the PPI was something Mr and Mrs H are likely to have given considerable thought to, a point borne out by the evidence I've seen: it clearly shows they wanted this type of protection.

Again, after our adjudicator had issued their view, it was also subsequently raised by Mr H that he had, in fact, already possessed a form of income protection in 1996 with another company i.e. it existed at the time of the PPI sale now complained of. That may well be his genuine recollection now. However, I take the view that Mr and Mrs H are represented by a professional claims management company and it provided no such evidence in its submission to us, some time ago. I note Mr and Mrs H themselves both signed a complaint form, submitted through that same professional company, confirming that at the time they had no such means in place when they were sold the PPI by Lloyds.

In any event, the income protection policy Mr H mentions *now* is said to have protected a *percentage* of his income. Even if I were to apply any weight to this information he hadn't previously mentioned, in my view, it merely portrays Mr and Mrs H as responsible and intelligent consumers who were keen on planning for the unforeseen challenges that family life presents. It adds weight to them being interested in products of this nature. It does not, in my estimation, mean that Lloyds was wrong to recommend a further insurance product that covered different eventualities, albeit there may well have some moderate resemblances in cover between the two.

In short, my findings on these 'later submissions' are that they lack consistency and came to us after contrary statements submitted by Mr and Mrs H's representative and signed by them. And in any event, they would make no difference to my overall findings for the reasons explained.

did Lloyds give Mr and Mrs H enough information at the point of sale?

It's certainly possible the information Lloyds gave to Mr and Mrs H about the PPI wasn't as clear as it should have been. We only have limited documents left from the sale. However, in my view, this doesn't alter my overall decision. I think they chose to take the PPI out and it looks like they specifically wanted this type of cover, with Mr B's income being protected. It wasn't fundamentally wrong for them, nor was it too dissimilar to what they reasonably thought they were buying from the information they were probably given at the point of sale. It also looks like the PPI was affordable for them – so it seems like it would have been useful if something went wrong. Because of this I don't think Mr and Mrs H would have declined the cover, even if Lloyds might have done a better job at explaining certain things, particularly in relation to the policy rules.

Overall, I consider that Mr and Mrs H would have still taken out the PPI. It was sufficiently close to what it's likely they thought they were getting and I think the policy could have provided a useful benefit at a potentially difficult time if Mr H lost his job or was too ill to work.

As I've implied, Mr and Mrs H's representative raised a large number of what I consider to be general complaint points, which it says apply to all PPI complaints. These general points

include: a claim that the Financial Ombudsman Service is not correctly applying the regulator's rules and guidance for handling PPI complaints; these policies represented poor value because of the number of significant exclusions and limitations of cover coupled with the low claims ratio; and the duty of utmost good faith meant Lloyds should have disclosed the poor value and explained the significance of the limitations and exclusions and the impact it had on the chances of making a claim.

Mr and Mrs H's representative has failed to say how these points apply to the specific facts and circumstances of their individual complaint, just that they apply to all PPI complaints.

I have, however, thought carefully about all these things and how they might apply in this case. But these points don't persuade me to alter my conclusions about what is fair and reasonable in all the circumstances of the complaint.

I don't think the PPI was mis-sold and for the reasons above I don't uphold this complaint. I'm very sorry to disappoint Mr and Mrs H.

my decision

Overall, having considered all the evidence and arguments to decide what is, in my opinion, fair and reasonable in all the circumstances of this complaint and for the reasons I have set out above, I don't uphold Mr and Mrs H's complaint – so I make no award.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs H to accept or reject my decision before 26 September 2021.

Michael Campbell
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