

complaint

This complaint is about a life assurance policy taken out in 1987 in connection with a lending facility to fund the development of their residential home into a commercial venture.

Mr and Mrs B say that the lender, Lloyds TSB Bank Plc (Lloyds TSB) mis-sold the policy.

background

The circumstances of this complaint, briefly, are that during the 1980s, Mr and Mrs B borrowed money from Lloyds TSB to help pay for the conversion of their family home into a commercial business. The loan was secured by way of a legal charge over the property. In 1991, following a query about the enforceability of the legal charge, Lloyds TSB withdrew its funding and the project went into receivership. Mr and Mrs B were required to leave their home. The property was subsequently sold, and the proceeds used to reduce Mr and Mrs B's outstanding liabilities.

Mr and Mrs B were very unhappy with the bank's actions, and complained to one of our predecessor schemes. That complaint did not proceed after it was established that Lloyds TSB had decided to write off the residual debt rather than pursue Mr and Mrs B for repayment. Subsequently, legal action was initiated, but it is my understanding that the claim was struck out in 2001.

In 2011, Mr and Mrs B complained that a policy arranged by Lloyds TSB in 1987 had been mis-sold. They said, in essence, that the policy document had never been in their possession, and they had no knowledge of the policy terms and conditions. Lloyds TSB, they said, had received the policy directly from the insurance company.

During the course of our investigation into the sale, Mr and Mrs B have asked that we re-visit the events surrounding the lending for the commercial project, and the aftermath of the receivership.

A separate complaint was set up relating to those matters. Here, I deal solely with the allegation that the life assurance policy was mis-sold in 1987. Any reference I have made to the lending, which I accept is drastically condensed, is merely for context.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have also taken into account the law, good industry practice at the time the policy was sold, and what I consider most likely to have happened during the sales process itself.

The first point I should make is that, whilst Mr and Mrs B have been prompted – at least in part – to bring this complaint following the judicial review that endorsed the way this service has dealt with the very high numbers of complaints that have been made about the sale of payment protection insurance (PPI) policies, the policy under consideration here is not, strictly-speaking, a PPI policy. It is a term life assurance policy

PPI policies are designed to protect the repayments under a credit facility in the event the policy holder is unable to work due to accident, sickness, or because they have lost their job. They will often include life cover for the underlying debt as well, but the essential features that are common to all PPI policies are the benefits payable in the event of accident,

sickness or unemployment. The policy about which Mr and Mrs B have complained does not have these latter features.

Nonetheless, the broad approach I have taken when considering Mr and Mrs B's complaint is not dissimilar to that which I would take in respect of a PPI policy, in that it seems to me that the essential questions I need to consider are:

- firstly, whether Lloyds TSB gave Mr and Mrs B information that was clear, fair and not misleading in order to put them in a position where they could make an informed choice about the insurance they were buying;
- secondly, whether in giving any advice or recommendation, Lloyds TSB took adequate steps to ensure that the product it recommended was suitable for Mr and Mrs B's needs.

In the event I am persuaded to find in their favour on one or other of the above, I shall then need also to consider whether Mr and Mrs B acted to their detriment as a consequence of any shortcomings on Lloyds TSB's part; that is, whether they did something (taking out the term life assurance policy) that they would not otherwise have done.

It is not immediately apparent from the submissions made by the parties, whether Lloyds TSB made a recommendation that Mr and Mrs B take out the business term life assurance policy, or simply provided information in order that they could decide for themselves whether to buy the cover. Ultimately, I have not reached a firm conclusion on this point because if I proceed on the assumption that Lloyds TSB recommended the policy to Mr and Mrs B I do not believe that the outcome of the complaint would be affected.

The policy in question was a single life business term life assurance policy. Policies of this type pay out a specified sum in the event of the death of the life assured. They typically do not have an investment element, and do not attract a surrender value if ended early. The archived documentation provided by the insurer, indicates that the policy was intended to repay the business lending for the commercial project - in full or in part depending on the amount outstanding at the relevant time - in the event that Mr B died during the term of the policy. So it seems to me that Mr and Mrs B had a need for the cover that the policy provided; in that sense, I do not consider I could fairly conclude that the policy was unsuitable.

At the time this policy was sold, it was not uncommon for lenders to require borrowers to take out life assurance specifically to provide cover for their outstanding liabilities. It was also not uncommon for the lender to take a charge over the policy (by way of a formal assignment of the policy benefits to it rather than to the policy holder). In such circumstances, it would not be unusual at all for the insurer, on commencement of cover, to send the documents directly to the assignee (in this case, the bank) rather than to the assignor (in this case, Mr B).

In any event, I am satisfied from considering the archived documentation that Mr and Mrs B wanted the cover, and actively participated in the setting up of the policy. In May 1987, they wrote to the insurer specifying that the policy - which was initially contemplated as a joint life policy - should instead be a single life policy covering Mr B alone but with an increased sum assured.

Mr and Mrs B have expressed some doubt over the use of different policy numbers in correspondence. Whilst I cannot be certain, given the passage of time, it seems to me most likely that the change of policy number is connected to the change in the policy provisions described in the preceding paragraph. I say this because the proposal form Mr B signed to apply for the single-life policy bears the policy number ending 9970C, and includes a hand-written note saying *“this policy to replace [policy number ending 9729] and [policy number ending 971J]”*.

The same document sets out the premium for the policy. The corresponding amount appears to have been paid by direct debit from a Lloyds TSB current account – under a reference ending with 9970C - up to the summer of 1991, when Lloyds TSB began exchanging correspondence with the insurer regarding non-payment of premiums. The timing of this appears to be broadly consistent with the commercial project going into receivership.

Lastly, I draw no adverse conclusions from the fact that Lloyds TSB apparently no longer holds the policy document. Businesses are not required to retain documents indefinitely, and I would not expect a business still to hold the formal document for a policy that most likely lapsed due to non-payment of premiums more than twenty years ago.

my final decision

My final decision, for the reasons set out above, is that I am not persuaded Mr and Mrs B have suffered detriment as a consequence of any potential shortcoming in the way Lloyds TSB Bank Plc sold the business term life assurance policy in 1987. I therefore do not uphold this complaint, and make no order or award against Lloyds TSB Bank Plc.

Jeff Parrington
ombudsman