

complaint and background

This complaint relates to the sale of a regular premium Payment Protection Insurance ('PPI') policy sold in conjunction with a credit card in October 1996. Mrs B complains Lloyds Bank PLC ('Lloyds') mis-sold the policy.

I have attached my provisional decision dated May 2014, which forms part of this final decision. In my provisional decision I set out why I was minded to uphold this complaint. I understand both Mrs B and Lloyds have accepted the method I proposed to calculate redress suggested in my provisional decision.

my findings

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

Because the parties have both accepted the proposed redress, I see no reason to depart from the conclusions set out in my provisional decision. It follows that I uphold this complaint.

my final decision

For the reasons I have set out, I determine this complaint in favour of Mrs B. I also require Lloyds Bank PLC to pay Mrs B fair compensation as set out below.

Jonathan Hanton
ombudsman

copy –provisional decision

complaint and background

This complaint relates to the sale of a regular premium Payment Protection Insurance ('PPI') policy sold in conjunction with a credit card in October 1996. Mrs B complains Lloyds Bank PLC ('Lloyds') mis-sold the policy.

Our adjudicator did not consider the policy had been mis-sold and did not uphold the complaint. Mrs B did not agree with the adjudicator's conclusions, so the complaint has been referred to me for a final decision.

my provisional 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 in the section of our website explaining how we deal with PPI complaints.

The overarching questions I need to consider, therefore, are:

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

If there were any shortcomings in the way the policy was sold I need to decide if Mrs B is worse off as a result. That is, would Mrs B be in a different position to the position she finds herself in now if there had not been any shortcomings.

was the policy added without Mrs B's consent?

Mrs B has said that she knew exactly what PPI was and that she generally requested it when applying for any loans or credit, in the hopes that it would give her applications a better chance of being approved. Mrs B says that once she had gained approval, she would cancel the PPI.

Mrs B says, however, that she would not have taken out PPI to protect a credit card, given the amounts were smaller than loans she had applied for. Mrs B says that this PPI must have been added to her card without her knowledge or consent.

While I find Mrs B's account of her history with PPI to be persuasive, in this case I consider that her memories have faded in the seventeen years since the sale – as Mrs B herself acknowledges.

The reason that I say this is because the available evidence I have about the sale is that Mrs B *chose* to take out PPI – she has clearly ticked next to the words '*If you do want Credit Card Payment Insurance tick here*' – and she has not ticked next to the words '*If you do not want Credit Card Payment Insurance tick here*'.

While I am concerned that the ticks in the form appear to be different from Mrs B's tick on the application form for her other complaint and the PPI questionnaires she has provided us while pursuing her complaint, I must take into account that Mrs B has *signed* the application form, indicating that she wished to purchase PPI. Therefore, at this stage I conclude that it is most likely that Mrs B

agreed to purchase PPI – and then forgot to follow her standard practice and cancel the cover she had agreed to.

basis of sale

Mrs B says that she cannot remember whether Lloyds recommended or advised that she buy the policy. Lloyds say that its records show it did advise Mrs B to purchase the policy.

Because an advised sales places greater obligations on Lloyds than an information only sale I accept Lloyds' submission it recommended the policy to Mrs B. This means that as well as having to provide Mrs B with information about the policy that was clear, fair, and not misleading, Lloyds *also* had to ensure that its recommendation was suitable for her needs.

was the policy suitable for Mrs B?

I do not at this stage consider it likely that Lloyds' recommendation that Mrs B purchase PPI was suitable advice for her needs.

This is because Mrs B has told us at the time she was sold the policy, her employment as bank relief staff meant that rather than her job being permanent and secure, it was limited in nature. This assertion is supported by the TSB Trustcard Mastercard application dated 7 October 1996, which records Mrs B's occupation as '*Student Nurse*.'

I appreciate that Mrs B has told us that she commenced full time employment in November 1996, soon after this application was completed. Our adjudicator enquired whether Mrs B was aware that the nature of her employment was about to change at the time she applied for the card (and the PPI). Mrs B told us that as an existing staff member (albeit on a bank relief or student basis) that she would have been offered the job at the interview. I accept Mrs B's explanation as plausible and consider it likely that at the time of the sale, Mrs B was *not* aware that her employment was about to come permanent.

Because I accept that Mrs B's employment was probably not permanent at the time this policy was sold, I consider this means she was likely to have been affected by the policy's onerous employment terms.

This is because the policy was likely to have only provided unemployment cover for those policy holders '*gainfully employed and working 16 hours or more per week in an occupation which is not ... limited in nature*'.

Whether Mrs B was bank staff (in which case she was likely to have been temporary) or a student nurse (and likely to have been on a fixed term contract) I consider it likely that her occupation was 'limited in nature' and thus prevented her from making a claim for unemployment under the policy.

Lloyds therefore recommended a policy that provided an unemployment benefit Mrs B was unlikely to have successfully been able to claim. It follows that I consider at this stage that this was not a suitable recommendation.

I am presently minded to conclude that if Lloyds had informed Mrs B that the policy may not be suitable because of its onerous unemployment terms, it is unlikely that she would have gone ahead with the purchase.

information

I have also considered whether Mrs B was given information about the onerous unemployment terms that was clear, fair, and not misleading to put her in a position where she could make an informed choice about the insurance she was buying. At this stage, I am not satisfied that Mrs B was.

In coming to this conclusion, I have taken into account that the policy booklet Mrs B is likely to have received explained that unemployment would not be covered when the policy holder's occupation was 'limited in nature.'

However, I have no information to safely conclude that Mrs B was given the policy booklet, or the time to read it, before being asked if she wanted to purchase PPI. And even if she was given the booklet and time to read it, I consider it likely that Mrs B would have put more weight on the recommendation Lloyds made at the meeting, rather than thinking she would need to read the documentation in detail.

I am therefore satisfied that if Mrs B had been properly informed of the onerous unemployment terms, she would not have purchased the policy.

It follows that I propose to uphold this complaint, and make an award against Lloyds.

proposed redress

Mrs B should be put back in the position she would have been in now if she had taken out the credit card without the PPI policy. So the PPI policy should be cancelled (if it has not been cancelled already) and Lloyds should:

- A. Carry out a hypothetical reconstruction of the credit card account to find out what the current balance of the credit card account would have been if Mrs B 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 Mrs B the difference between the current balance and what the current balance would have been without PPI.

- B. Pay Mrs B interest at 8% per year simple[†] 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. Set out in writing to Mrs B how it has calculated the compensation in A and B.

[†] I understand Lloyds is required to deduct basic rate tax from this part of the compensation. Whether Lloyds needs to take any further action will depend on her financial circumstances. More information about the tax position can be found on our website.

Mrs B should refer back to Lloyds if she 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 provisional decision

For the reasons set out above, I am presently minded to uphold this complaint and make an award against Lloyds Bank PLC.

I now invite both parties to provide any further submissions they wish to make within one month, after which I will issue my final decision.

Jonathan Hanton
ombudsman