

complaint

This complaint concerns the sale of a regular (monthly) premium payment protection insurance (PPI) policy purchased in connection with a credit card from Lloyds Bank PLC (Lloyds). Mr R says that Lloyds mis-sold the policy.

background

The background to this complaint can be found in my provisional decision issued in June 2014. A copy of that provisional decision is attached and forms part of this final decision. In my provisional decision I explained why I was minded to not uphold Mr R's complaint and invited both parties to let me have any further representations.

Lloyds has responded indicating it does not have any further information to submit and that it believes the complaint should not be upheld. However it has indicated it would agree to pay the amount suggested for distress and inconvenience.

Mr R has also responded indicating he does not agree with the provisional decision regarding the mis-sale. He has submitted copies of some correspondence from the bank over the period February 1995 and October 2012. He is also unhappy with the amount awarded for distress and inconvenience.

my findings

I have carefully considered all the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances of this complaint.

Mr R has in response to the provisional decision indicated he would "*definitely, have changed my mind to NOT taken out the PPI – had I been made aware of any proposed changes in conditions and terms of any claims.*" He has submitted copies of some letters received from Lloyds indicating that changes to terms and conditions of his card were changing.

In considering the issue of mis-sale of the PPI policy I have to consider the facts that existed *at the time the policy was sold*. This includes the terms and conditions applicable at that time and also Mr R's circumstances at that time

I would clarify that the terms and conditions which affected Mr R's eligibility for the policy were the same at the time the policy was taken out and when it was cancelled. Mr R's circumstances changed during the existence of the policy which affected his eligibility. The terms and conditions of any contract may change during the life of that contract and Lloyds did notify Mr R of any changes in the policy and card conditions. This is reflected in the correspondence submitted by Mr R. But Mr R made his decision to purchase the PPI based on the circumstances as they were in 1990.

I have seen no new information that affects the conclusions I reached in my provisional decision. It follows that I confirm the conclusions reached and that I do not uphold Mr R's complaint.

I have also taken note of Mr R's comments on the amount I proposed to award for the distress and inconvenience caused by the way Lloyds dealt with his complaint. I consider it important to explain the basis on which I can make awards for distress and inconvenience.

My role is not to punish a business. I can consider an additional award where I consider the business has *caused* any material distress or inconvenience or other non-financial loss.

Guidance is provided on our website as to the levels of award that should be made. The award I suggested is in line with this guidance. I am therefore of the view that this is an appropriate amount to award in the particular circumstances of this case.

In summary I confirm the decision reached in my provisional decision for the reasons outlined in that decision as no new information has been provided which affects that conclusion.

my final decision

My final decision is that I do not uphold the complaint of Mr R against Lloyds Bank Plc.

I direct Lloyds Bank Plc to pay £150.00 to Mr R for the distress and inconvenience caused in their dealing with his complaint.

Christine Fraser
ombudsman

Copy of Provisional Decision

complaint

Mr R's complaint is about the sale of a regular premium payment protection insurance (PPI) policy sold in connection with a credit card. Mr R says that Lloyds Bank PLC (Lloyds) mis-sold the policy to him.

background

In January 1990 Mr R took out a credit card with Lloyds (at the time trading as TSB). Mr R initially indicated he purchased a PPI policy in 1992 however other correspondence submitted suggests it is most likely the PPI was purchased at the time the credit card was taken out in 1990.

Lloyds do not have any records relating to the time of the original credit card application or the date the PPI may have been purchased. Lloyds originally indicated it could find no indication on its records that PPI was ever purchased. However it later accepted that PPI was purchased and charged to the card.

Mr R has indicated to this service he considers the policy was mis-sold as the benefits were not properly explained at the point of sale and he was later unable to claim on the policy.

The PPI policy was designed to protect Mr R's card repayments in the event of him being unable to work due to accident, sickness or unemployment. The policy also provided Mr R with life cover for the outstanding balance of the credit card account up to a maximum value.

Lloyds has indicated that its processes at the time were such that if the policy was recommended to Mr R it would have been suitable for his circumstances. Also that Mr R would have been provided with information about the policy at the time of purchase. It does not accept the policy was mis-sold.

An adjudicator from this service recommended that Mr R's complaint should not succeed.

Mr R disagreed with the adjudicator's findings and has requested that an ombudsman consider the complaint.

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 Mr R 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?

- Whether, in giving any advice or recommendation, Lloyds took adequate steps to ensure that the product it recommended was suitable for Mr R's needs?
- If there were any shortcomings in the way the policy was sold I need to decide if Mr R is worse off as a result. That is, would Mr R be in a different position to the position he finds himself in now if there had not been any shortcomings?

After careful consideration of all the arguments put forward and having considered the limited documentation available, on balance I am persuaded that Mr R's complaint should not be upheld. However I have reached that conclusion for substantially different reasons to the adjudicator and I outline below my reasons.

I have taken account of the fact that the policy was sold some 24 years ago. It is not surprising some documents are not available and I have to consider that memories may have faded with the passage of time.

when was the PPI purchased and what was the sales process?

Lloyds have indicated the credit card was taken out in 1990 but there is no copy of the credit card application form still in existence. When Mr R first submitted his complaint to Lloyds about the mis-sale in March 2012 Lloyds indicated that it could not establish if a PPI policy was taken out with the account.

Mr R submitted a letter sent to him by Lloyds dated February 1992 which indicated a telephone conversation had taken place and a PPI "*application form*" was sent out to him under cover of that letter. It was on the basis of this letter that Mr R suggested his PPI was purchased in 1992.

However Mr R has also later submitted a series of correspondence from February and March 1995 which indicates Mr R had PPI cover earlier than 1990. A letter in early February 1995 to Mr R states that Mr R had successfully made a claim on the PPI policy attached to his credit card in 1991. This letter says "*I note from our records that in 1992 you received the maximum benefit payments which covered the period from June 1991 to June 1992*".

On the basis of this correspondence I am persuaded that Mr R did have PPI cover prior to June 1991. It would seem to me most likely in these circumstances that Mr R purchased the PPI at or around the time when he took out his credit card in 1990.

Mr R has indicated the sale took place over the telephone but I also note that he referred originally to the sale being in 1992 when it seems he did have a discussion on the telephone with a Lloyds "*Telemarketing Advisor*". The telephone call in February 1992 did relate to PPI according to the letter sent out to Mr R.

However the content of the correspondence from 1995 indicates that in February 1992 Mr R was unemployed and in receipt of a claim on the PPI policy in relation to his credit card. Mr R has indicated he was unemployed from 1991. Thus he would not have been eligible to purchase the PPI policy in 1992 and it seems he already had a policy in place for his credit card. Thus I must assume this application form sent out to Mr R in February 1992 may have been for a possible amendment to the PPI or was for some other purpose. As there is a series of correspondence from 1995 which highlights a course of action I consider that

evidence persuasive that it is most likely the PPI for the credit card was purchased in 1990. Mr R has indicated he was unemployed from 1991.

Based on the submissions from both parties I consider Lloyds most likely advised Mr R to take out the policy, possibly during the course of a telephone call.

was the PPI policy sold in 1990 presented as optional?

Mr R did at one point indicate to Lloyds that he was not told the insurance was optional. However he has also indicated to this service that he recalls being told the cover was very good under the policy and he considered the unemployment cover in particular to be of value.

I cannot be certain what may have been said or presented to Mr R but based on the evidence and information before me I am currently persuaded that Mr R had an interest in the cover and I think it most likely he decided to take out the policy at the time.

was the policy suitable?

I have taken into account the policy benefits, cost of cover, and Mr R's broader financial circumstances at the time of the sale in 1990. Having done so I am not persuaded that I can safely conclude the policy was unsuitable for Mr R even if there were shortcomings in the way Lloyds sold the policy. I am also not persuaded that Mr R would likely have acted differently (that is, not taken out the policy) had he been properly advised and informed.

- Mr R was working full time when the policy was sold to him and would have been eligible for the cover that the policy provided in 1990.
- I have not seen any evidence that Mr R would have been subject to any of the limitations or exclusions of the policy such as pre-existing medical conditions or unusual employment terms.
- Mr R has indicated he recalls having limited sick pay benefits from his employer of less than three months if he was unable to work due to ill-health. In the event of a successful disability claim I note that this PPI policy would have paid a monthly benefit of 10% of the card balance for 12 months.
- Mr R has indicated he had been working for his employer for around ten years in 1990, so he would have received a redundancy settlement of some sort. However Mr R has indicated he had no savings or other insurance policies he could rely upon to replace his income if he were unable to work due to sickness or unemployment.

Given these circumstances I consider that Mr R would have found the policy benefit to be useful.

I cannot be certain that the full costs of the policy were set out to Mr R at the time of purchase. However, it is my view that the initial cost of no more than £0.79 per £100 of the outstanding monthly card balance for a benefit of 10% of the card balance was not excessive and appears competitive with other policies of its type available at the time. I have not seen any evidence that the cost at the time was unaffordable for Mr R and I also note the monthly cost would have appeared on his statement each month.

Because of this I am not persuaded that full details of the cost and benefit, if indeed there were any shortcomings, would have caused Mr R to act differently. The policy also provided Mr R with life cover.

summary

In summary I do not believe I can safely conclude that Lloyds presented the PPI policy as anything other than optional. I am also satisfied that it was a suitable recommendation for Lloyds to make to Mr R.

Finally I am not currently persuaded that Mr R would have decided against taking out the policy if he had been provided with clearer information about the PPI, should there have been any shortcomings in the information with which he was provided.

It follows that I do not currently accept that in 1990 the PPI policy was mis-sold to Mr R.

additional factors

I have noted that Mr R made a claim on the policy for 12 months from 1991 to 1992. Lloyds indicated it had no record of any claim ever being made on the policy. However the correspondence submitted by Mr R from around 1995 indicates he did make a successful claim.

The 1995 correspondence I have referred to arose as the result of Mr R attempting to make a further claim on the policy for unemployment. The facts outlined in the correspondence indicate that Mr R was ineligible for a claim at this point as he was not working and it would seem had not been in employment since the end of the previous claim in 1992.

I cannot in this decision deal with any issues relating to the reasons for the refusal of a claim, my considerations are limited to looking at whether the policy was mis-sold to Mr R in 1990 and what detriment may have been suffered following this sale.

I have considered the situation in 1992 when correspondence suggests an application form for PPI was sent to Mr R. As Mr R made a successful claim starting in 1991 it is clear he had a policy in place prior to this correspondence in 1992.

From the correspondence around 1995 it seems to me that when Mr R tried to make a claim on the policy Lloyds recognised Mr R was no longer eligible for the PPI and so refunded the premiums paid by Mr R from the end of his claim in 1992 until 1995. I also note that in the 1995 correspondence Lloyds states that the PPI policy was cancelled.

Even if I accept that events in 1992 meant there was a further 'sale' and I accept that Mr R was mis-sold the cover at that time, on balance, I'm not persuaded there would be any award due to Mr R. I say this because it appears his premiums have already been refunded from 1992 until 1995, and so he was (at that time), put back in the position he would have been in if he had not continued with any cover in 1992.

distress and inconvenience

When considering this complaint I have looked at how Lloyds dealt with Mr R's complaint in relation to the possible mis-sale of PPI. Lloyds' initial response to Mr R in March 2012 indicated it "*had conducted an extensive search of our systems and historical records.*

Having done this, we have established that you did not take out a Payment Protection Insurance policy with the account you quoted in your complaint.”

Mr R responded to that with a letter in early April 2012 sending copies of some of the correspondence he held to show that he did have PPI. He heard nothing more, despite chasing for a reply, until he received a letter at the end of August 2012. In this letter Lloyds said *“I have reconsidered your complaint in light of the further information provided. On considering this information I do not believe it introduces anything that changes the original decision and I am still unable to agree that the policy was mis-sold.”*

Lloyds did not apologise for failing to respond or acknowledge it was dealing with Mr R's further evidence. But also more importantly Lloyds did not in my view provide a clear explanation to Mr R of why it rejected his complaint in its letter in August 2012 when it did acknowledge the PPI policy was purchased.

In my view the way Lloyds dealt with Mr R's complaint resulted in stress and inconvenience to Mr R in particular in relation to the additional expense of telephone calls, copying and correspondence to chase Lloyds for its response at a time when Mr R has been unwell.

I am therefore minded to award Mr R £150 to be paid by Lloyds for the distress and inconvenience caused in the way Lloyds has dealt with his complaint.

my provisional decision

Subject to any further evidence put forward by the parties I am currently minded to not uphold this complaint about the mis-sale of PPI in connection with card ending 3331.

I am however of the view that Lloyds Bank PLC should pay £150 for the distress and inconvenience caused to Mr R.

Christine Fraser
ombudsman