

## **complaint**

This complaint is about a credit card payment protection insurance (“PPI”) policy. Mr C says Lloyds Bank PLC, trading as TSB, (“Lloyds”) mis-sold him the PPI.

## **background**

Mr C complained to Lloyds about the sale of the PPI. Lloyds replied to say it hadn’t mis-sold him the policy. Unhappy with Lloyds’ response Mr C asked this service to step in.

Our adjudicator didn’t think we should uphold the complaint. Mr C disagreed with the adjudicator’s opinion, so the complaint was passed to me.

I issued my first provisional decision in May 2018 explaining why I didn’t think the PPI had been mis-sold. Mr C disagreed with this and provided further information for me to consider before I reached my final decision.

I issued my second provisional decision in December 2018, a copy of which is attached and forms part of this final decision. In my second provisional decision I explained why I was still not intending to uphold Mr C’s complaint. In summary, based on the limited information available, I didn’t think there was enough evidence to suggest Lloyds had done something wrong.

However, I did find that Lloyds got a high level of commission and profit share (more than 50% of the PPI premium) - so it should have told Mr C about that. Because Lloyds didn’t tell Mr C, that was unfair.

So I said that Lloyds needed to pay back to Mr C any commission and profit share it got that was more than 50% of the PPI premium. And Lloyds needed to pay back to Mr C any extra interest he paid because of that.

Lloyds didn’t respond to the provisional decisions. Mr C has provided further comments in response to my second provisional decision.

Mr C maintains the following points;

- the policy was sold in 1995 and not 1972. Mr C says Lloyds have muddied the waters by suggesting that the policy commenced in 1972 as it would have been clear to Lloyds that it was not possible for a Gold Card protection policy to be issued before a Gold Card had been issued.
- the importance of the date is that the policy was not suitable for him and shouldn’t have been sold to him in 1995 due to his employment circumstances and potential management buy-out of the company he worked for, which meant he went on to become self-employed.

## **my findings**

I’ve again reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. We’ve set out our general approach to

complaints about the sale of PPI on our website and I've taken this into account in deciding Mr C's case.

And having done that, I'm still not persuaded that the policy was mis-sold. I'll explain why.

Mr C maintains that the credit card account upgrade application in 1995 is when the policy started. He said the first premium was charged in May 1995 and that he later queried this, and another charge, as he was unsure of what they were for.

As set out in my second provisional decision in December 2018, there are questions over when the policy was actually sold - whether in 1972 or 1995. I considered whether the policy having been sold in 1995, would have made a difference to the outcome of the complaint - and I didn't think that it did.

Mr C has clarified after reviewing the credit card upgrade application form that the handwriting is his and that he must have quickly filled in the form. Albeit he has commented that the tick in the PPI box is unlike the ticks in the other boxes on the form. I've thought about this, but Mr C signed the credit card upgrade application form. And as Mr C was applying for an account upgrade, I think it more likely than not that he would have read the application form to make sure he agreed to the information contained within it before he signed it. So, had the PPI been sold in 1995 I'm satisfied it would have been the result of Mr C's decision to take it knowing he didn't have to.

I want to assure Mr C that I acknowledge his strength of feelings around the date the PPI was sold and why he feels Lloyds shouldn't have sold him the policy in 1995. But as I've previously explained in my second provisional decision, having looked at what are likely to have been the most relevant policy terms and conditions over the course of 1995 and 1996, I haven't seen anything that would have made it more difficult for Mr C to make a claim - even if he did go on to become self-employed. So, even if Lloyds was aware that Mr C's employment circumstances were about to change, I still think the policy was suitable for him.

I've thought about everything Mr C has said - including what he's said about Lloyds having sold him other PPI policies alongside loans in the early 2000's. He's told us Lloyds compensated him for these because of the management buy-out. However, this decision is about the sale of PPI with the credit card upgrade and so I cannot comment on the other PPI policies taken out alongside other products.

Mr C has also said Lloyds had a continuing responsibility to make sure the PPI policy remained suitable - not only at the outset but on a continuing basis, particularly paying attention to a change of circumstances. While I acknowledge Mr C's comment about this, Lloyds didn't have a continuing duty to check the policy remained suitable. This said, had Lloyds recommended the policy to Mr C it would have had to check that the PPI was right for him, based on his personal circumstances at the point of sale.

As I've mentioned previously in my second provisional decision, on this occasion, I don't know whether Lloyds would have advised Mr C to take PPI had it been sold in 1995 as there are question marks over when the policy in question was actually sold.

But I don't think this is crucial to the outcome because, had Lloyds recommended the policy, I think it would have been a suitable recommendation for Lloyds to have made given what I know about Mr C's circumstances in both 1972 and 1995. It follows that once the policy had

started it would have been the responsibility of Mr C to make sure the policy remained suitable for him.

I'd like to assure Mr C that I've thought carefully about everything he's told me, but for the reasons I've already explained, I'm not persuaded these change my decision.

#### **what the business needs to do**

Lloyds has to pay back to Mr C any commission and profit share it got that was more than 50% of the PPI premium. Lloyds should also pay back to Mr C any extra interest he paid because of that.

Lloyds should re-work the credit card account and pay back to Mr C the difference between what Mr C owes and what he would have owed if the commission and profit share it got hadn't been over 50% of the cost of the PPI. Lloyds should also pay Mr C 8%\* simple interest (15% before April 1993) if he paid off his credit card at some point.

\*Businesses have to take basic rate tax off this interest. Mr C can claim back the tax if he doesn't pay tax.

#### **my final decision**

For the reasons given above, I don't think the PPI policy was mis-sold. So I'm not persuaded that Lloyds has to pay back the entire cost of the PPI to Mr C.

But I do think that Lloyds has to pay back to Mr C any commission and profit share it got that was more than 50% of the PPI premium.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 14 March 2019.

Staci Rowland  
**ombudsman**

### **copy of 2<sup>nd</sup> provisional decision**

#### **complaint**

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#### **background**

Mr C complained to Lloyds about the sale of the PPI. Lloyds replied to say it hadn't mis-sold him the policy. Unhappy with Lloyds' response Mr C asked this service to step in.

Our adjudicator didn't think we should uphold the complaint. Mr C disagreed with the adjudicator's opinion, so the complaint was passed to me.

In May 2018, I issued my first provisional decision and I invited both parties to respond and send me any additional evidence they wanted me to think about.

In summary, based on the limited information available, I didn't think there was enough evidence to suggest Lloyds had done something wrong.

However, I did find that Lloyds got a high level of commission and profit share (more than 50% of the PPI premium) - so it should have told Mr C about that. Because Lloyds didn't tell Mr C, that was unfair.

So I said that Lloyds needed to pay back to Mr C any commission and profit share it got that was more than 50% of the PPI premium. And Lloyds needed to pay back to Mr C any extra interest he paid because of that.

Lloyds didn't respond to the provisional decision. Mr C responded with a number of points. Some of these points don't appear to be the responsibility of Lloyds as they concern events that took place after the sale of PPI. So I haven't considered these in my findings. But if Mr C wants to pursue these further, he can make a complaint to the insurer in the first instance.

The points Mr C makes in regard to what he believes was the sale are:

- the policy was sold in 1995 and not 1972 as suggested.
- the policy was not suitable for him and shouldn't have been sold to him due to his employment circumstances and a future buy-out of the company he worked for, which meant he went on to become self-employed.

### **my provisional findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We've set out our general approach to complaints about the sale of PPI on our website and I've taken this into account in deciding Mr C's case.

And having done that, I still don't currently intend to uphold Mr C's complaint.

Mr C maintains the policy was sold in 1995, so I've considered whether this would have made a difference to the outcome of the complaint – and I don't currently think it does.

Lloyds has given me a copy of the credit card upgrade application form that Mr C went through in 1995. Having looked at the form, there was a section on '*optional features*'. PPI was one of them and the box for it was ticked. It's possible Mr C didn't fill the form in himself. But he did go on to sign the form, agreeing to the upgrade and PPI. So had the PPI been sold in 1995, I think that would've been the result of Mr C's decision to take it knowing he didn't have to.

In 1995, Lloyds would have sold PPI in one of two ways: with or without a recommendation. When a business sold PPI having recommended it, the business had to make sure the policy was right for the consumer. It also had to give them clear information about the policy. But if the business didn't provide the consumer with advice, it only had to give them the clear information they needed to decide for themselves whether the policy was right for them in light of their circumstances.

On this occasion, I don't know whether Lloyds would have advised Mr C to take PPI had it been sold in 1995 as there are question marks over when the policy in question was actually sold.

But this isn't crucial to the outcome because, had Lloyds recommended the policy, I think it would've been a suitable recommendation to have made given what I know about his circumstances at the time.

I'm aware Mr C feels Lloyds shouldn't have sold him the policy in 1995, knowing he would shortly be self-employed after he completed a management buy-out of the company he worked for. This happened in 1996. Mr C says Lloyds was aware of his intention to carry out the buy-out for a long time as it was Lloyds that was providing the secured borrowing for this.

However, having looked at what are likely to have been the most relevant policy terms and conditions over the course of 1995 and 1996, I haven't seen anything that would've made it more difficult for him to make a claim – even if he did go on to become self-employed. So, even if Lloyds was aware that Mr C's employment circumstances were about to change, I still think the policy was suitable for him.

In addition to making sure the policy was suitable for Mr C, had Lloyds recommended it in 1995, Lloyds also had to provide him with clear information. It's possible Lloyds wouldn't have done. But even if it didn't, for the same reasons I think a recommendation to take PPI in 1995 would've been suitable for Mr C, I don't think better information about the PPI would have put him off taking out the cover even had the policy been sold when he says it was.

What's more, as I suggested in my first provisional decision, had the policy been sold in 1972, which is when Lloyds has assumed it was, there is very little information available to show what happened around that time. So, with that being the case, and because there were a narrower set of requirements on Lloyds than those set out above, I'm not inclined to reach a different outcome in this case whether the policy was sold in 1972 or 1995.

As a result, Lloyds doesn't have to pay back the entire cost of the PPI to Mr C. But Lloyds will pay back *some* of the cost of the PPI to Mr C because:

- Lloyds got a high level of commission and profit share (more than 50% of the PPI premium) - so it should have told Mr C about that. Because Lloyds didn't tell Mr C, that was unfair.
- To put that right, Lloyds has offered to pay back the amount of commission and profit share that was above 50% of the PPI premium - and I think that offer is fair in this case.

#### **what the business needs to do**

Lloyds has to pay back to Mr C any commission and profit share it got that was more than 50% of the PPI premium. Lloyds should also pay back to Mr C any extra interest he paid because of that.

Lloyds should re-work the credit card account and pay back to Mr C the difference between what Mr C owes and what he would've owed if the commission and profit share it got hadn't been over 50% of the cost of the PPI. Lloyds should also pay Mr C 8%\* simple interest (15% before April 1993) if he paid off his credit card at some point.

\*Businesses have to take basic rate tax off this interest. Mr C can claim back the tax if he doesn't pay tax.

#### **my provisional decision**

For the reasons given above, I don't currently think the PPI policy was mis-sold. So I'm not persuaded at present that Lloyds has to pay back the entire cost of the PPI to Mr C.

But I do currently think that Lloyds has to pay back to Mr C any commission and profit share it got that was more than 50% of the PPI premium.

