

complaint

This complaint is about a credit card payment protection insurance (PPI) policy taken out in 1998. Mr W says Lloyds Bank PLC mis-sold him the PPI.

my findings

I've considered 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 W's case.

I've decided the policy wasn't mis-sold because:

- I think Lloyds made it clear that Mr W didn't have to take out the PPI and he chose to take it out – although I can understand why he can't remember this.

Mr W says he didn't know he had this PPI policy and he feels quite strongly about this point. Lloyds say it would've got Mr W's consent before adding the cover to his account – and it would have made it clear to him that it was optional. Where there's a dispute about what happened I have to base my decision on what I think is most likely to have happened – taking into account all the evidence that's available.

I've seen a copy of the application form that was completed for Mr W's credit card. On there is a section for PPI called "TSB Credit Card Payments Insurance". Given how old this document is, it's difficult to tell exactly what it says under here, but I can see that there's a brief description about PPI including what it is and how much it costs. It then says "I wish to apply for TSB Credit Card Payments Insurance". There's a tick in the box next to this, and Mr W has signed the form. So it seems as though Mr W wanted the cover at the time – and he could have left the box blank had he not wanted it.

PPI would have also been on Mr W's monthly credit card statements. So I think he'd have known once he'd seen his statement that he had PPI – and he could have called Lloyds to cancel this if he wanted to.

Mr W has sent in a document that he says shows he didn't take PPI. But this is a summary of the terms and conditions of a credit card and so I wouldn't expect to see anything about PPI on this.

I know Mr W will be disappointed with this, but from everything I've seen and been told, I can't fairly say that Lloyds didn't give Mr W a choice in taking PPI – or that it added the cover without him knowing about it.

- Lloyds says it recommended the PPI to Mr W so it had to check that the PPI was right for him – and based on what I've seen of his circumstances at the time, I think that it was. For example he wasn't affected by any of the exclusions to or limits on the PPI cover and he seems to have had a need for the cover.

On Mr W's credit card application he's said that he was self-employed. Some PPI policies do make it more difficult for a self-employed person to make a successful unemployment claim on the policy. But having looked at the information available to me, I don't think the terms and conditions of Mr W's PPI policy would have made it difficult for him to make a successful claim.

Mr W has sent us in the details of a number of different insurance policies he's had over the years. I've looked at these, but from what I've seen, none of the policies would have covered Mr W for accident, sickness and unemployment – like the PPI would have. So I think he could have found the PPI useful should he have not been working.

- It's possible the information Lloyds gave Mr W about the PPI wasn't as clear as it should've been. But he chose to take it out - so it looks like he wanted this type of cover. And it seems like it would have been useful for him if something went wrong. It also looks like it was affordable at the time. So I don't think better information about the PPI would have put him off taking out the cover.
- Which means Lloyds doesn't have to pay back all of the cost of the PPI to Mr W.

But Lloyds will pay back *some* of the cost of the PPI to Mr W because:

- When the policy was sold, Lloyds expected to get a high level of commission and profit share (more than 50% of the PPI premium) - so it should have told Mr W about that. Because Lloyds didn't tell Mr W, that was unfair.
- To put that right, Lloyds has basically 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.

I've thought about everything Mr W has said - including what he has said about possibly not working – either employed or self-employed – at the time he took out this cover. And he's sent us in information that he says supports this. But these points don't change my decision.

I say this because Mr W said he was self-employed on the application for the credit card. And I think the application form he completed at the time of sale is likely to be the most accurate reflection of Mr W's employment status at the time.

Mr W has sent in a schedule from HM Revenue & Customs (HMRC) that he says shows there were periods of time when he was unemployed. And I agree that it does appear that there were some periods where 'payment not needed'. But in the year when Mr W took out this PPI the schedule says "*Too Late To Pay*" – which I think suggests that there was some payment due. So taking all this into consideration, I think it's more likely Mr W was employed when he took out this PPI policy and credit card.

what the business needs to do

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

Lloyds should re-work the credit card account and pay back to Mr W the difference between what he 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 W 8%* simple interest if he paid off his credit card at some point.

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

my final decision

The PPI policy wasn't mis-sold – so Lloyds Bank PLC does not have to pay back all of the cost of the PPI to Mr W.

But Lloyds Bank PLC does have to pay back to Mr W 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 am required to ask Mr W to accept or reject my decision before 17 May 2018.

Sophie Wilkinson
ombudsman