

## **complaint**

Miss E and Mr B complain that Lloyds Bank PLC (then trading as Lloyds TSB) mis-sold them a payment protection insurance (PPI) policy.

## **background**

Miss E and Mr B took out PPI to protect the monthly repayments on their joint mortgage.

The earliest record Lloyds has for this mortgage account shows that in 1997 Miss E and Mr B had PPI which protected their mortgage repayments in the event that they couldn't work as a result of accident, sickness or unemployment.

Miss E and Mr B later took out further advances on their mortgage account but their existing PPI policy automatically covered any additional lending.

Our adjudicator didn't uphold the complaint. Miss E and Mr B disagreed with the adjudicator's opinion.

Miss E and Mr B said that they originally thought they'd been sold the policy when they took out their mortgage in 1992. They don't recall being sold PPI in 1997 - and they're not sure why they would've taken it out then as their financial situation was better in 1997 than it had been at the start of their mortgage. Miss E and Mr B said they both had stable jobs with good sick pay and redundancy benefits, as well as savings and some shares. So they don't feel they needed PPI. And they cancelled it when they realised they had it.

The complaint came to me to decide. I issued a provisional decision.

## **my provisional decision**

Here are some of the main things I said.

*Miss E and Mr B told us their mortgage started in 1992. Looking at their mortgage application and the mortgage offer from that time, I've no reason to doubt what Miss E and Mr B say about this. I can't see any mention of PPI in this paperwork – although that doesn't mean that Miss E and Mr B didn't take out PPI then, as they originally thought. It's apparent from looking at the bank's records that these show Miss E and Mr B had PPI on their account in 1997. So this must mean they either took PPI out when their mortgage started - or in or before February 1997 when there was a change on their mortgage account.*

*Lloyds couldn't confirm how this policy was sold. But Miss E and Mr B said it was during a meeting. So, to be fair to Miss E and Mr B, Lloyds has accepted this is probably what happened. And it says it would've recommended PPI to Miss E and Mr B in these circumstances.*

*Usually I'd expect the paperwork to show what's likely to have happened at the time and how the PPI was likely to have been presented. But Lloyds hasn't been able to provide anything signed by Miss E and Mr B to show how they agreed to take out PPI. I don't think that's surprising. I wouldn't expect Lloyds or Miss E and Mr B to have necessarily kept all records from so long ago.*

*Without any records of the sale I can't know exactly what was discussed when Miss E and Mr B took out PPI. They don't recall agreeing to have it and it wouldn't be reasonable to expect them to remember in detail what was said at the time. This means that what Miss E and Mr B say now isn't enough on its own for me to be able to uphold this complaint. I must look at all the available information and decide what I think is most likely to have happened.*

*Miss E and Mr B's mortgage was a major financial commitment, repayable over a substantial number of years. Their home would've been at risk if their mortgage payments weren't kept up to date. PPI provided dependable protection. So, I can see why they might've felt PPI was useful to have – whenever they took it out.*

*On balance, I think it's likely that Miss E and Mr B decided they wanted the benefits PPI offered and they decided to buy the policy to protect their home.*

*Lloyds told us that it doesn't any longer have a policy document from the date it says Miss E and Mr B took out PPI. And there's no earlier policy wording available. But it has provided a policy document which was in use soon afterwards. So I think it's likely that in all main respects a policy that Miss E and Mr B took out anytime between 1992 and 1997 would've had similar terms and conditions.*

*Miss E and Mr B took out their mortgage when they were both in work and contributing towards making the monthly repayments. So, I think it was appropriate for the policy to be taken out in both their names and the way the benefit was split between them seems reasonable. I think if either of them wasn't earning it would've made a big difference to their overall financial position.*

*The fairest way to assess their complaint is to look at it on the basis that Lloyds advised them both to take out PPI. This gives Miss E and Mr B's complaint the best chance of success. That's because if a business makes a recommendation about PPI, it doesn't just have to give important policy information in a clear way. It also has to take reasonable steps to make sure the cover it recommends is suitable.*

*Looking at the likely policy terms, Miss E and Mr B were both eligible for the policy. And I think Miss E and Mr B could've found PPI useful. Miss E and Mr B mentioned having up to 6 months' worth of savings or other insurance in place, as well as some sick pay entitlement. But the policy would've covered their mortgage repayments and paid out on top of any sick pay benefits and for longer - up to 12 months per claim if Miss E or Mr B was too sick to work. Also the policy would've paid out if either of them became unexpectedly unemployed.*

*No job can be guaranteed to be secure indefinitely. Redundancy benefits wouldn't have helped if Miss E or Mr B was off work sick. PPI would've paid out in addition to any redundancy money they might've got, giving Miss E and Mr B some additional financial security and leaving intact any savings they may have had.*

*And Miss E and Mr B wouldn't have been forced to sell any shares which I think they probably would've either preferred to keep as a long term investment and/or sell when they could be sure of getting a good price. I think that having cover in place so they could've continued to make their monthly mortgage repayments without having to sell investments would've provided a useful extra benefit to Miss E and Mr B if they couldn't work.*

*Overall, it looks to me like PPI was suitable for Miss E and Mr B based on what I've seen of their circumstances at the time.*

*It's possible some information Lloyds gave Miss E and Mr B about the PPI wasn't as clear as it should've been. There were some things the policy didn't cover. But it doesn't look as if these affected Miss E and Mr B. The policy seems to have been affordable for Miss E and Mr B when they took it out. The monthly premium increased automatically when they took out additional borrowing. But this doesn't appear to have caused them any money problems. And, as they paid for this policy on a monthly basis, they could've cancelled it at any time without losing out financially if they decided they no longer wanted to pay for it.*

*I don't know much about how Miss E and Mr B came to take out the PPI. But taking everything into account, I think Miss E and Mr B still would've decided to buy the policy even if they'd been better informed as it provided useful protection in their particular situation. I don't think having clearer information would've put them off buying it. So I don't find that Miss E and Mr B have lost out as a result of anything Lloyds might've done wrong.*

*I've also thought about whether Lloyds needs to give back Miss E and Mr B some of the commission they paid. The Supreme Court ruling and new rules and guidance don't apply to certain types of mortgage agreement – including a 'regulated mortgage'. As Miss E and Mr B's mortgage became a regulated mortgage before 6 April 2008 they don't apply. So Lloyds doesn't need to refund any of the commission Miss E and Mr B paid for the PPI they took out with this mortgage.*

Based on the information I'd seen, my provisional decision was not to uphold this complaint.

#### **what the parties said in response to my provisional decision**

Miss E and Mr B aren't happy with information Lloyds gave them when they complained to the bank. And they don't recall ever being in a meeting when Lloyds sold them PPI. They also say it wasn't obvious to them that they were paying for PPI because the monthly premium was included with their mortgage repayments. Lloyds has made no further comment on what I've said in my provisional decision.

#### **my findings**

I've considered 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 this complaint.

Lloyds looked at this complaint on the basis that it might've recommended the policy to Miss E and Mr B during a meeting. I felt that was the fairest way to deal with their complaint – especially as Lloyds said Miss E and Mr B had mentioned this. Looking at the complaint this way gives Miss E and Mr B the best chance of success as it imposes extra obligations on Lloyds. But I accept that it simply isn't known how Miss E and Mr B took out the PPI.

Miss E and Mr B haven't told me about any new information or said anything else that affects my decision. So, after taking carefully into account everything that's been said in response to my provisional decision, I still think it's fair not to uphold this complaint for the reasons I explained in my provisional decision.

**my final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E and Mr B to accept or reject my decision before 28 January 2019.

Susan Webb  
**ombudsman**