

## **complaint**

This complaint concerns the sale of a regular premium payment protection insurance (“PPI”) policy taken out in conjunction with a credit card in 2002. Mr V says Lloyds TSB Bank Plc (“Lloyds”) mis-sold the policy to him, citing a number of reasons, including a number of reasons normally associated with a complaint about the sale of a single premium policy, rather than a regular premium policy.

## **background**

Our adjudicator recommended that the complaint should not be upheld. Briefly he said that in his view Mr V;

- was eligible for the policy
- understood the policy was optional
- would not have been caught by any of the important limitations in the policy

and the policy was not unsuitable for him.

Mr V disagreed with the adjudicator’s findings and asked for the matter to be referred to an ombudsman for review, as he is entitled to do.

## **my findings**

In deciding what is fair and reasonable in the individual circumstances of this case, I have considered the issues in accordance with our general approach to considering complaints about the mis-sale of PPI, which is well-documented. This includes taking into account the law and good industry practice at the time the policy was sold, and any regulatory rules and guidance relevant to the complaint. In essence, the questions I need to consider are:

- whether Lloyds gave Mr V 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 his needs.

If there were shortcomings in the way in which Lloyds sold the policy, I then need to consider whether Mr V is worse off as a result; that is, would Mr V have done something different – ie not taken out the policy – if there had been no shortcomings.

Mr V says cover was added without his knowledge or consent and it was not made clear to him that the cover was optional. I cannot know for certain what was or was not discussed with Mr V. I accept therefore it is possible that cover was added without his knowledge or consent and that it was not explained cover was optional. But on the other hand the documentation from the time of the sale would indicate that Mr V was given an option to purchase cover and he decided to do so.

The credit agreement, which has been signed and dated by Mr V, says at section six “*Optional features*”

***Asset Payment Protection (One box must be ticked)***

*For the additional piece of mind of knowing that you can continue to meet your minimum credit card payments even if you can't work due to accident, sickness or unemployment you can take out Asset Payment Protector".*

*Tick Yes to take out Asset Payment Protection and protect your payments* Yes

*If you do not wish to protect your payments, tick No* No

In this case Yes  has been ticked so I am satisfied that it is more likely than not that Mr V was presented with a choice and he chose to purchase cover.

So, in summary, I am not persuaded there is sufficient weight of evidence for me to safely conclude that cover was added without Mr V's knowledge or that he did not understand cover was optional.

Mr V also says that he was not informed that he could purchase cover elsewhere. There was no duty upon Lloyds to advise Mr V he could purchase cover elsewhere, so I will not consider this point further.

There is some dispute between the parties about the precise circumstances of the sale with Lloyds saying cover was recommended whereas Mr V says it wasn't. However, even if I were to proceed on the assumption that a recommendation was made – which imposes a *greater* obligation on the business - and that there were shortcomings in the way the policy was sold, I do not believe that the outcome of the complaint would be affected.

Clearly, I cannot be certain how much Mr V understood about the policy at the time. Nevertheless, taking into account the policy benefits, the likely cost of cover, and the information Mr V has given us about his broader circumstances at the time of the sale, I am not persuaded I can safely conclude that if Mr V had been properly advised and informed, he would have decided that he did not have at least some need of the cover the policy provided. I say so for the following reasons:

- Mr V was eligible for the plan, apparently in good health and employed, so he was not affected by any of the potentially significant limitations or exclusions affecting the plan, such as those relating to pre-existing medical conditions or unusual employment terms that might have made it poor value for him.
- Mr V, in applying for the credit card, was assuming a new and additional financial commitment. He has confirmed that he had no existing insurance provision or savings to provide him with payment security in the event of accident, sickness or unemployment, and no employment related benefits such as sick pay. This suggests to me that there was a need for the policy and the advice to purchase it was not unsuitable.
- The cost of the policy was in the region of 79 pence per £100 of outstanding balance on the credit card account for a monthly benefit of 5% of that balance, payable for up to 11 months, followed by the clearance of the remaining outstanding balance in month 12, per claim. As such, the cost of the policy in relation to the actual monthly benefit payable was competitive with many alternatives available elsewhere, and would not, in my view, of itself, have made the policy appear unattractive to Mr V or meant that the advice to purchase it was unsuitable.

So because Mr V had a need and because he was not affected by the exclusions, and because the policy provided a reasonable benefit at a competitive cost, I find he would have gone ahead anyway if he had been better advised and informed.

Mr V also says Lloyds failed to inform him of any commission payment it would receive for the sale of the policy. The only requirements in the industry codes at the time of this sale were to disclose commission if the intermediary was acting on behalf of the consumer and the consumer asked about commission. It is far from certain in this case that Lloyds was acting on Mr V's behalf or that it owed him any fiduciary duty, and I have not seen any evidence that Mr V asked about commission. Therefore Lloyds would not have been obliged to disclose any commission, if it received any.

But, even if I found that a fiduciary duty did exist, I am not currently persuaded I could fairly conclude that commission disclosure would have been material to Mr V's decision making at the time, and mean that he would not have gone ahead with a policy that he was otherwise happy with.

Mr V also says that Lloyds failed to inform him of the policy cancellation terms. However, there was nothing onerous or unexpected about them and I think it unlikely that better information about this would have affected Mr V's decision to take out the policy.

**my final decision**

For the reasons set out above I do not uphold Mr V's complaint or make any award against Lloyds TSB Bank Plc.

Peter Cook  
**ombudsman**