complaint

Mr B says Lloyds Bank PLC ('Lloyds'), who were trading at the time as Cheltenham & Gloucester plc ('C&G'), mis-sold him a payment protection insurance ("PPI") policy, once in 2004 and again in 2007.

background and summary to complaint

Mr B bought PPI when he took a mortgage in 2004. When Mr B took further borrowing in 2007 the original mortgage was paid off and a new mortgage started. Mr B was sold PPI to go along with the new borrowing. Both Lloyds and Mr B think these sales occurred in a branch.

The policy for each sale provided cover for Mr B for accident, sickness, and unemployment – subject to its exclusions and limitations. It offered to repay the mortgage amount £340.45 a month in 2004, and £415.39 a month in 2007, towards Mr B's mortgage balance in the event of a successful claim. In addition, in the event of a successful claim the policies also paid out an additional £3 per £1000 of mortgage account balance at the point of claim, up to certain maxima. At the time of the sale in 2004 the policy cost £8.70 a month, and in 2007 it was £12.50 a month.

Mr B initially provided his circumstances for the sale in 2007. We asked him to clarify his details at the time of the sale in 2004 and to provide some evidence for the benefits he told us about. Mr B's representatives told us they had been unable to contact Mr B and that we should assess the complaint using the details Mr B provided for the 2007 sale and to use those same details for the 2004 sale as well.

Where there is missing or insufficient evidence for me to consider, I need to make my decision based on a balance of probabilities – that is to say, I'll consider what I do have, look at what both sides have said, and make a decision based on what I think most likely happened.

Lloyds has provided the mortgage application for both sales. These show that at the time of the 2004 sale Mr B was employed as a maintenance foreman. In 2007 Mr B was employed as a manager for a park resort. For the 2007 sale Mr B told us he was entitled to one year on full pay in the event he was off work through ill health. This is an unusually high level of sick pay for any occupation, so we had asked Mr B to supply some evidence of it. At the time of writing we have not received any such evidence. And so, this has reduced the weight I feel able to place on what Mr B told us about his circumstances at the time of the sales in 2004 and 2007. Consequently, I believe it's more likely that Mr B had benefits which were smaller than he told us about, i.e. that his sick pay was most likely less than full pay for 12 months. But, whatever Mr B's sick pay was in 2007, I think it's reasonable to assume it was the same in 2004.

Mr B also told us he had more than a year's worth of savings and other means at the time of the sale in 2007. Mr B later told us he had savings of £1,000 and £1,500 in life cover. And so, in the same way as above, I think it's reasonable, in the circumstances, to assume that this is what he held at the time of the sale in 2004. These assets don't suggest to me that Mr B would have been able to maintain his salary for a whole year based on these other means alone.

Mr B has said he was in good health at the time of the sale in 2007, and so it follows he was, most likely, in good health in 2004.

Lloyds has sent us screenshots to show that the mortgage account was redeemed and that the mortgage account was a regulated account. The screenshots tell us that the mortgage accounts became regulated when Mr B took a further advance in 2007.

Mr B's representative has made lengthy and substantial representations on his behalf.

I will not restate them all here, but I have read and considered them all carefully. In summary, Mr B's representative says:

- Lloyds failed to meet the sales standards which applied at the time. In those circumstances, applying the regulator's rules and guidance for businesses on handling PPI complaints under DISP App 3, it should be presumed Mr B wouldn't have taken out the policy and the complaint should be upheld. Mr B's representatives believe there to be no evidence to rebut that presumption;

- The policy excluded or limited claims for back pain and stress, which are some of the most common reasons people are off work. This significantly reduced the value of cover;

- The true costs including interest and the fact it was unlikely you could make a successful claim meant the policy was of inherently poor value as shown by the low claims ratio. The common law duty of utmost good faith means Lloyds should have told Mr B about the poor value;

- The common law duty of utmost good faith also means Lloyds should have explained the significance of the exclusions and limitations of cover to Mr B and the impact they would have had on his chances of making a claim;

- The policy only protected payments for the short-term, whereas a mortgage is generally someone's biggest ever long- term transaction – cover would stop at the time it would be most needed; and

- The information Mr B received was misleading. These policies were promoted as providing peace of mind, but the number of exclusions and limitations on the scope of the cover meant this was untrue.

Our adjudicator didn't uphold the complaint – both parties have seen and provided their responses to the adjudicator's opinion. Mr B disagreed with the adjudicator's opinion for several reasons.

As the complaint couldn't be resolved informally, it has been passed to me for a final decision.

my findings

Although I have only included a summary of the complaint, I have read and considered all the evidence and arguments available to me from the outset, in order to decide what is, in my opinion, fair and reasonable in all the circumstances of this complaint.

relevant considerations

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; relevant regulators' rules, guidance and standards; relevant codes of practice; and, where appropriate, what I consider to have been good industry practice at the time. The Financial Ombudsman Service has set out its general approach to PPI complaints on our website and published some example final decisions that set out in detail how these relevant considerations may apply to PPI sales like Mr B's. I don't intend to set that out in much detail here but I've taken this into account in deciding Mr B's complaint.

This first sale took place in 2004 before the sale of general insurance products like this became regulated by the FSA in January 2005. So the FSA's and the FCA's overarching principles for businesses and insurance conduct rules (ICOB and ICOBS) are not applicable to this complaint; nor is the FCA's Perimeter Guidance (PERG).

Mr B arranged a further advance on his mortgage after mortgage lending became regulated in October 2004 – this led to the whole mortgage becoming an FCA regulated mortgage. That means the unfair relationship provisions set out in s.140A of the Consumer Credit Act, the Supreme Court judgment in Plevin about s.140A of that Act and the rules and guidance made by the FCA about the handling of complaints about the non-disclosure of commission in light of the Plevin judgment, aren't applicable to the sale in 2004 or the sale in 2007.

the 2004 sale

There were a number of industry codes in existence at that time, which I am satisfied are applicable to my consideration of what is fair and reasonable in the circumstances of this complaint. In particular, *The General Insurance Standards Council's General Insurance Code for private customers – the 'GISC Code'.*

This sale was made during a period of industry 'self-regulation' by the General Insurance Standards Council (GISC). It published the GISC Code, which set out minimum standards of good practice for its members to follow when selling insurance, including PPI.

The Association of British Insurers (ABI) also published a number of codes, which I consider to be indicative of the standards of good industry practice expected from intermediaries, like Lloyds, selling insurance at this time:

- The Association of British Insurers' General Insurance Business Code of Practice for all intermediaries (Including Employees of Insurance Companies) other than Registered Insurance Brokers – 'The ABI Code'.

The ABI Code was supplemented by:

- Guidance on the application of the ABI Code
- The ABI Statement of Practice for Payment Protection Insurance
- The ABI General Business Code of Practice for Telephone Sales, Direct Marketing/Direct Mail and the Internet
- The Resume for Intermediaries

While not all intermediaries who sold PPI at the time were a member of the ABI or GISC, I consider these publications to be indicative of the standards of good practice expected of intermediaries like Lloyds at the time. So I'm satisfied I should take these codes into account

when deciding, what is in my opinion fair and reasonable in the circumstances of Mr B's case.

There was also the Mortgage Code which was a voluntary code followed by subscribing lenders and mortgage intermediaries. While predominantly about mortgage related matters, it also included some insurance related commitments.

the 2007 sale

This sale took place in 2007 after the sale of general insurance products like this became regulated by the Financial Services Authority (FSA) in January 2005. So the FSA's and the FCA's overarching principles for businesses and insurance conduct rules (ICOB) are applicable to this complaint.

It's also relevant to note that there have for some time been codes governing the sale of insurance products such as PPI. There is much in common between the present statutory regulatory regime and the non-statutory provisions that preceded it (and, indeed, the position at law).

Although the non-statutory provisions no longer apply as specific requirements on those selling insurance, I consider they still represent a helpful guide to good industry practice. As a result it is appropriate for me to take them into account along with the relevant ICOB rules and the other relevant considerations.

In the period immediately before statutory regulation in 2005, as mentioned above, there was a period of industry 'self-regulation' by the General Insurance Standards Council (GISC). It published The General Insurance Standards Council's General Insurance Code for private customers – the 'GISC Code'. This set out minimum standards of good practice for its members to follow when selling insurance, including PPI.

And, as mentioned above, the Association of British Insurers (ABI) also published a number of codes, which I consider to be indicative of the standards of good industry practice expected from intermediaries, like Lloyds, selling insurance at this time:

- The Association of British Insurers' General Insurance Business Code of Practice for all intermediaries (Including Employees of Insurance Companies) other than Registered Insurance Brokers – 'The ABI Code'.

The ABI Code was supplemented by:

- Guidance on the application of the ABI Code
- The ABI Statement of Practice for Payment Protection Insurance
- The ABI General Business Code of Practice for Telephone Sales, Direct Marketing/Direct Mail and the Internet
- The Resume for Intermediaries

The sale took place after the sale of mortgage products became regulated by the FSA. So the mortgage conduct of business rules (MCOB) are applicable to this complaint. Prior to regulation subscribing lenders and mortgage intermediaries followed a voluntary mortgage code. While predominantly about mortgage related matters, it also included some insurance-related commitments.

For both sales, I've also taken account of relevant law in reaching my decision, including: the law relating to negligence, misrepresentation and contract (including the express and implied duty on professional advisers to give advice with reasonable skill, care and diligence); the law relating to the duty of utmost good faith; and the law relating to causation and remoteness.

And I'm also mindful of the evidential provisions and guidance set out at DISP App 3, first issued by the FSA in 2010, which sets out how firms should handle complaints relating to the sale of PPI. The 2004 sale took place before insurance mediation became a regulated activity, so Lloyds was required to take into account the provisions in DISP App 3 as if they were guidance when considering Mr B's complaint about the 2004 sale.

key questions

Taking the relevant considerations into account, it seems to me that the key questions I need to consider in deciding what is in my opinion fair and reasonable in all the circumstances of this complaint, are:

- If Lloyds gave advice, whether it advised Mr B with reasonable care and skill – in particular, whether the policies were appropriate or 'suitable' for him, given his needs and circumstances.

- Whether Lloyds gave Mr B sufficient, appropriate and timely information to enable him to make an informed choice about whether to take out the policies, including drawing to his attention and highlighting – in a clear, fair and not misleading way – the main provisions of the policies and significant limitations and exclusions.

- If, having considered these questions, I determine the complaint in favour of Mr B, I must then go on to consider whether and to what extent Mr B suffered loss or damage and what I consider would amount to fair compensation for that loss or damage.

Having carefully considered the above, and the information provided by both Mr B and Lloyds, I've decided not to uphold Mr B's complaint. I've set out my reasoning below.

did Mr B know he had a choice?

Lloyds had to make it clear that the PPI policy was optional.

To get the PPI in 2004, Mr B had to complete an application form for it. This application is separate to the application Mr B was making for the mortgage, as was the separate direct debit mandate Mr B had to complete to pay for the PPI. Mr B completed both the PPI application form and the direct debit mandate. Had he not wanted the cover he could have not completed these documents.

The same was true of the 2007 sale in that Mr B completed an application form for the PPI and a separate direct debit. And both documents were separate to the documents Mr B would have completed for his mortgage. In addition, the mortgage offer at section 9 says,

"Insurance you must take out through C&G

You are not obliged to take out any insurance through C&G as a condition of this mortgage."

The document then describes PPI as an 'Optional Insurance'. It then explains that,

"Payment Protection Plus covers your monthly mortgage payment in the event of accident, sickness or redundancy. You are not obliged to take this cover but should you wish to through Lloyds TSB, the monthly cost for the term of the mortgage is shown opposite."

The premium of £12.50 is shown on the document. Mr B signed this form to get the borrowing and the PPI.

Taking everything into account, and in the absence of any detailed testimony from Mr B to the contrary to consider, I think it's more likely that Mr B knew the policies were optional and he agreed to take them out without undue pressure.

did Lloyds provide advice?

Lloyds says it provided advice during these sales. Mr B couldn't remember whether the policies had been sold with a recommendation. So, whilst it places a higher responsibility on Lloyds whilst, in this case, making no difference to the outcome of this complaint, I have assessed the case as if advice was provided in both sales.

This means Lloyds had to advise Mr B with reasonable care and skill, in particular whether the policy was appropriate or 'suitable' given their needs and circumstances.

the advice

I don't know what steps Lloyds took in 2004 to establish whether the policy was a suitable recommendation for Mr B. It seems Mr B can't remember clearly what happened and there is no record of what the adviser discussed in relation to the policy. This is unsurprising in respect of a sale during a meeting. The adviser had some limited information about Mr B's financial circumstances, but there is no specific evidence to show the adviser took steps to establish whether Mr B would have been caught by the significant exclusions and limitations which might have meant the policy did not fully meet his needs. For example, there is nothing to suggest Lloyds considered whether Mr B had any pre-existing medical conditions.

While I don't know what was discussed in the meeting in 2007, the documentary evidence suggests that Lloyds took some steps to establish whether the policy was a suitable recommendation for Mr B. The adviser had information about some of Mr B's financial circumstances as part of the mortgage application. But although a demands and needs statement was completed to try and establish whether Mr B had a need for the policy – I don't think it did enough to ensure the PPI was suitable by asking questions about his wider circumstances such as any health issues and existing means.

Overall, on the balance of probabilities I'm not persuaded Lloyds did all it should have done to determine whether the policies were suitable for Mr B given his circumstances. So I'm not persuaded Lloyds advised with reasonable care and skill.

While I'm not persuaded Lloyds did all it should have done to make sure the policies were suitable for Mr B, I do think it's more likely than not that the policies were ultimately suitable for him. In reaching that conclusion I've taken into consideration:

- Mr B met the eligibility criteria for the policies.

- Mr B had a need for the policies – it seems likely that Mr B's ability to continue to meet his mortgage repayments would have been put under strain if Mr B was not working for an extended period of time – even allowing for [the redundancy benefits, sick pay benefits and savings] he says he would have been entitled to. I say that considering that I have seen no evidence to support the high level of sick pay that Mr B told us he would be entitled to. And I've considered that at the time of both sales Mr B was taking the majority of the borrowing to consolidate existing debts. So, I have considered that the policy would have paid out in addition to whatever sick pay arrangements Mr B may have been able to rely on, and most likely for longer. I have also though that Mr B's savings were modest in nature and Mr B's likely redundancy payment, considering his income at the times of the sales, was most likely also modest in nature. The policies could have paid out for up to 12 months in the event Mr B had long term ill health, or if he lost his job, in which circumstance he wouldn't have been able to rely on any sick pay benefits, whatever they were.

- The monthly cost of the policies appears to have been affordable for Mr B.

- The exclusions and limitations didn't make the policies unsuitable for Mr B. There was nothing about Mr B's employment or occupation which would have made it difficult for him to claim. And he hasn't told us about any pre-existing medical conditions that could affect his ability to claim. There were also no additional restrictions on cover for mental health or back problems.

- While there were limits to the cover provided by the policies (including: the 'any similar gainful occupation' condition – for the 2004 policy only, the requirement that Mr B be disabled or unemployed for 60 days before he could make a claim – both the 2004 and the 2007 policy, and the fact the policy would only pay benefits for a maximum of 12 months for each claim – both policies), the policies still provided valuable cover given:

    - Mr B's circumstances, including his employer's sickness and redundancy provisions (which he might expect to provide an income during the policies' 60-day qualification period) and the limits to those provisions, which mean the policies could play an important role after those provisions were exhausted; and

    - The fact the policies protected the mortgage repayments relating to his home and the potential consequences should Mr B be unable to make the repayments on loans secured against his home.

I've also considered whether, when providing advice, Lloyds gave Mr B sufficient information about the cover provided by the policies to enable him to understand what Lloyds was recommending to him and make an informed decision about whether to follow that advice and take out the policies.

the information

In 2004, I'm satisfied it's more likely than not that Mr B was given a broad description of what the policies were intended to cover (that is that the policies would protect his payments if Mr B was unable to work through accident, sickness or unemployment) and of the approximate costs. I have reached this conclusion because I think it's unlikely Mr B would have taken out

the policies without any sense of what the policies were for and of how much the premiums might be. For the 2007 sale there is some evidence that the cost was made clear to Mr B at the time of the sale.

But the evidence from the times of both sales doesn't tell us whether Lloyds gave sufficient information about the actual monthly benefit, the actual cost (for the 2004 policy) or about the exclusions or limitations before Mr B agreed to take out the policies.

Overall, having considered the parties' representations about what happened, while I'm satisfied the policies were a suitable recommendation for Mr B I'm not persuaded Lloyds did enough to present information about the policies it was recommending in a way that was fair and reasonable to him. I'm not persuaded Lloyds gave Mr B all of the information he needed about the policies to make an informed decision about whether to follow the recommendations and take it out.

I've considered how my findings interact with the FCA's list of significant failings in its guidance for firms handling PPI complaints set out at DISP App 3. And for the reasons set out above, I am persuaded there were significant failings in this case.

In addition to the failings I've highlighted above, Mr B's representative has raised a number of general points in regards to the requirements on a business when providing information in PPI sales. It suggests these points apply to all PPI complaints, like Mr B's. I've considered these carefully and summarised them as:

- The common law duty of utmost good faith means the business should have explained the low claims ratio – what Mr B's representative considers to be 'poor value' – and the fact that much of the premium went to the business rather than the insurer.

- The common law duty of utmost good faith means the business shouldn't have just told Mr B about the limitations and exclusions, it should have gone further and explained the significance of them to him.

I'm not persuaded by Mr B's representative's views on this. The duty of utmost good faith in insurance law imposed a duty on both parties to the contract to disclose material facts and not to make material misrepresentations. While I can't be certain what a court would say – I think it's unlikely a court would find that this extended to the insurer having to disclose the claims ratio information or explaining the significance of the limitations and exclusions in the way Mr B has suggested. And taking into account the law, industry codes and standards of good industry practice applicable to this complaint, I don't think it's fair and reasonable to conclude that Lloyds ought to have done either.

what effect did Lloyds's shortcomings have on Mr B? To what extent did Mr B suffer loss or damage as a result?

I've found that Lloyds didn't do all it should have done when it sold these policies to Mr B. So I have gone on to consider whether it would be fair and reasonable to conclude Mr B suffered loss and damage as a result. To answer this, I must decide whether or not Mr B would have still taken out the policies, had Lloyds done things properly.

While I'm not persuaded Lloyds took the steps it should have done to establish whether the policies it recommended were suitable for Mr B, I have found that the policies were ultimately suitable for him.

In those circumstances it seems to me that, whether or not Mr B has suffered loss or damage in this case primarily depends on whether, if Lloyds had explained things properly, Mr B would have acted differently, or whether he would have taken out the policies in any event.

Mr B says he wouldn't have taken them out and believes I should presume this to be the case given the significant failings identified above. I've considered the representations of both sides and the evidence relating to this carefully.

Deciding whether to follow advice to take out insurance requires the consumer to weigh up a number of factors before deciding whether to proceed. Effectively the consumer has to weigh up the advice to take out the policy, the cost of doing so given the benefits offered in return and the potential consequences they will suffer if they do not have insurance, should the risks come to fruition.

The evidence in this case suggests that Mr B had some interest in taking out payment protection insurance. By this I mean when Lloyds advised him that there was a suitable product he could buy that would protect his mortgage payments in the event he was unable to work because of accident, sickness and unemployment, he concluded he wanted that product. But Mr B made that decision based on incomplete information, meaning what he thought he was getting is not exactly what he got.

As I explained earlier, I'm satisfied from the evidence about Mr B's circumstances at the time of the sale that the policies were not fundamentally wrong or unsuitable for him.

Although I consider it more likely than not that Mr B knew he would have to pay something for the policies, it doesn't appear Lloyds told him the exact premium at the point Mr B applied for the policy in 2004, whilst I think it did in 2007. Having said that, it seems likely Mr B would have been told the cost before the policy started in 2004 and he paid for the policies for a number of years, so if the costs were significantly at odds with his expectations at the points of sale, it's possible he might have raised that with Lloyds at the time, or reconsidered his decision.

Overall, I'm not persuaded Mr B would have found the cost unacceptable if he had been given the exact figure during the meeting in which he agreed to the policies.

In addition, I'm not persuaded Lloyds made clear exactly what Mr B would get back in return in the event he made a successful claim. But I think it's unlikely Mr B's expectations about what the policies would pay in the event of a claim (an amount sufficient to meet his mortgage payment) were significantly different to what the policies actually did – if anything, it is more likely than not that the policies actually paid more in the event of a claim than he would have expected as there was an additional cash payment.

Possibly the most significant differences between what Mr B thought he had bought and what he actually bought were the following:

- The policies excluded claims relating to medical conditions that Mr B knew about or ought to have known about before the start date of the policy;

- The policies limited, and in some situations, excluded unemployment cover if Mr B wasn't a permanent employee;
- For the 2004 policy, the requirement that in order to be eligible for a disability claim – Mr B be unable to do his own job, a similar job or any paid work which his experience, education or training reasonably qualified his to do;
- The policies protected payments for up to 12 months, rather than the remaining term of the mortgage.

I do accept there is a possibility the limitations and exclusions above might well have caused Mr B pause for thought – and may well have caused him to conclude the policies weren't as good as he thought and he might have decided not to proceed. The limitations on the cover, when coupled with the other shortcomings in this sale, might have dissuaded some consumers in slightly different circumstances from Mr B from taking out the policies.

But, the evidence about Mr B's circumstances at the time of sale shows that the policies weren't fundamentally wrong or unsuitable for him. Mr B was eligible for their benefits and they provided cover that, despite their limitations and exclusions, could've proved valuable to him should the insured risks have become a reality. I also haven't seen any evidence to suggest Mr B would've been caught by any of the significant exclusions – Mr B didn't have any pre-existing medical conditions and was in permanent employment. So, I still think he had some good reasons to take the policies out.

The policies didn't exclude back or mental health conditions, or place any additional restrictions or more onerous evidential requirements in the event of a claim on those grounds than would have applied to any other disability claim. And I think its unlikely Mr B would have expected to make a disability claim on the policies without first providing some evidence to support that claim.

For the 2004 policy, if Mr B had known he could only claim for disability if he was unable to do both his job and any similar gainful occupation' which in the insurer's view he would be, or might reasonably become, qualified for, it might have played into his thinking about what he would have done. And I accept it may have given him pause for thought – although it's possible he may not have been overly concerned given that if Mr B was unable (through disability) to carry on his own occupation the chances that he would be able to take up a similar occupation would also, in all probability, be limited.

Having considered all of the evidence and arguments in this case, I consider it more likely than not Mr B would still have taken out the policies. The policies were suitable for him, were sufficiently close to what it's likely he thought he was getting and provided benefits that would help his manage the consequences if Mr B was made redundant, or unable to work through accident or disability. In the circumstances I consider it more likely than not Mr B would have taken out the policies in any event notwithstanding the limitations on cover.

Mr B's representatives say the rules about how to handle PPI complaints (DISP App 3) make it clear that, where a significant failing is identified, it should be presumed the consumer wouldn't have taken out PPI, unless there is evidence to outweigh the presumption. They say we should follow this other than in exceptional circumstances.

That guidance is for firms, but it is a relevant consideration so I take it into account along with many other things when I decide what is in my opinion fair and reasonable. Considering the purpose of the guidance, I don't think it was ever intended to be at odds with the approach I have taken.

I've thought about what outcome applying the FCA's guidance to this complaint might lead to. In the language of DISP App 3, I've found it would be reasonable to conclude there were substantial flaws in the sales processes. In those circumstances, DISP App 3 says it should be presumed Mr B would not have bought the PPI he bought unless, in the particular circumstances of the complaint, there is evidence to rebut the presumption.

I'm satisfied, applying DISP App 3, it's reasonable to conclude the presumption is rebutted in the particular facts and circumstances of this complaint. Taking into account Mr B's circumstances as detailed above, I consider it reasonable to conclude the position Mr B found himself in as a result of the sales was the same position he would have been in had the 'breach' or 'significant' failings not occurred.

Mr B believes the presumption may only be rebutted when the flaws in the sales processes were immaterial, that the flaws in this case were highly material and we have failed to give proper weight to the evidence – including his own comments that he would not have taken out the policies. I am not persuaded by these arguments.

Even if I am ultimately departing from the guidance for firms set out at DISP App 3 (which I don't consider I am), I am only doing so because I do not consider, in this case, that it would represent fair compensation to put Mr B in the position he would have been in if he had not bought the policies.

That is because, while I accept it is possible that he would not have taken out the policies, I am satisfied that of the two possibilities, it's more likely than not that he would still have taken out the PPI had he been given clear, fair and not misleading information about the policies he was buying. So I'm not persuaded it would be fair and reasonable in those circumstances, to conclude Lloyds should pay Mr B compensation, as that would put him in a better position than he would have been in if everything had happened as it should have done.

I'm also aware that Mr B thinks Lloyds misrepresented the terms of the policies in how it described the PPI. While I accept there is a possibility a court might conclude some of Lloyds's statements misrepresented the contract, in my opinion the reason why Lloyds failed to act fairly and reasonably was not because of what it did or didn't say in the information it provided – but because the overall information Lloyds gave Mr B, in the way it did, was insufficient to meet the standards I consider it fair and reasonable to expect it to have met in 2004 and 2007 when providing information about an insurance policy.

I've also thought about the approach Mr B's representative says a court might take if it were to find Lloyds negligently misrepresented the contract to Mr B and about the remedy a court might award if it were to find that Lloyds had been in breach of its duty of utmost good faith. But this doesn't persuade me to alter my conclusions about what is fair and reasonable in all the circumstances of the complaint – including what I think is fair compensation in the circumstances of this case. For the reasons I've already set out I don't think it would be fair and reasonable to put Mr B in a better position than if everything had happened as it should have done.

my decision

Overall, having considered all the evidence and arguments to decide what is, in my opinion, fair and reasonable in all the circumstances of this complaint and for the reasons I have set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 August 2020.

Douglas Sayers
ombudsman