

## **complaint**

This complaint is about a payment protection insurance (PPI) policy taken out with a credit card in 1996. Miss C says Lloyds Bank PLC, trading as TSB, mis-sold her the PPI.

## **background**

I sent Miss C and Lloyds a provisional decision explaining why I thought the PPI policy wasn't mis-sold and why Lloyds had to pay back to Miss C some of the cost of the PPI. I said I'd consider anything else Miss C or Lloyds wanted to give me by 20 September 2018. Lloyds hasn't sent anything else. Miss C has replied with more points and evidence.

## **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 Miss C's case.

I've decided the policy wasn't mis-sold. I'll explain why.

The credit card application form Miss C signed had a box for her to tick and said: "*Tick here if you would like to be covered by TSB Credit Card Payments Insurance*". The box is ticked. And I think Miss C would have known it only needed to be ticked if she wanted the cover. So I think Lloyds made it clear to Miss C that she had a choice about taking the PPI - and I think she chose to take it out. I say this taking into account that Miss C was most likely advised to take the cover, and so advised to tick the box.

Lloyds likely recommended the PPI to Miss C, so it had to do more and check the PPI was right for her. And from what I've seen of her circumstances at the time, I think that it was. For example, Miss C wasn't affected by any of the exclusions to or limits on the PPI cover. She also seems to have had a need for the cover.

For example, for a successful unemployment or sickness claim the PPI could've paid out for up to twelve months. Miss C would probably have been entitled to some work sick pay. But she'd only just started with her employer. So I think it's likely this would have been limited at first. And, for the same reason, I don't think she'd have received much redundancy pay.

Miss C had savings worth around one month's income in her savings account. Taking into account her current account balance on a statement roughly six months after the sale, she might've had a total, very roughly, of around three months' income in savings at the time of the sale. This is some way short of the amount of savings that might ordinarily make me think Miss C's other means meant she didn't need the PPI cover.

Miss C has sent us evidence to show her early card bills were modest. So if Miss C suffered a loss of income I think she would likely have had enough savings to clear any balance outstanding on her card. But if Miss C lost her income due to illness, injury or unemployment she'd potentially have other calls on her savings. So any use of her savings to cover her past card spending would reduce what she had to fall back on. And so the PPI could have helped her if she was unemployed or was too sick to work for a prolonged period.

Miss C says she could've made minimum card payments instead if needed. But that would involve incurring interest costs on her past card spending at a time when she'd suffered a loss of income. So this doesn't persuade me that Miss C didn't have any need for the cover. She has also told us her partner and parents could have helped if she lost her income, but other people's circumstances and ability to help can change.

Miss C intended to clear her card balance each month. She is also confident that she could have stopped her spending if she lost her income. This, together with what she says about her card spending being modest, does persuade me that Miss C's need for the cover wasn't as great as it might otherwise have been. But I still think she had a need for the cover that justified Lloyds recommending that Miss C consider taking it out.

I say this taking into account that neither Lloyds nor Miss C could've been sure at the sale that Miss C would succeed in carrying out her intention of always clearing her balance. I note that a January 1997 statement Miss C sent us shows the previous month's balance had not been cleared and an interest charge had been incurred – although there may have been a particular and exceptional reason for that. But even if Miss C cleared her statement balance each month, there could still be outstanding spending on the card due to the gap between the card statement being produced and the statement payment date.

With all this in mind, I still don't think Miss C's other means meant that she had no need for the PPI cover. I also note that her savings account balance had halved over the year running up to the sale. And the current account statements she's sent us, which are for some months after the sale, both have lower closing than opening balances. So I can't say from any of this that Miss C was generally regularly receiving more pay than she was spending on a month to month basis at the time of the sale.

I've taken into account that the PPI benefit amount was 10% of the card balance shown on the last statement immediately before a claim began. It was only paid for absences lasting 30 days or more. But for absences like that, this amount would be paid on day 31 and then paid again on a monthly basis every month during a claim – so it would significantly reduce the outstanding balance over time, all other things being equal.

Taking everything into account, I don't think Lloyds was wrong to recommend that Miss C consider taking out the cover.

As well as making sure its recommendation was right for her, Lloyds needed to give Miss C enough information for her to decide whether she wanted the cover. I don't think Lloyds gave Miss C as much clear information as it should have. But, for the reasons I've given above, it seems like the cover would've been useful for Miss C if something went wrong. It also looks like it was affordable. And Miss C did choose to take out the cover – so it looks like she wanted this type of cover at the time. And she made her choice having been told on the application form: *“For just 71p per £100 of the total amount of your monthly statement it will take care of 10% of your outstanding balance if you can't work through illness, injury or unemployment for a maximum of 12 months.”*

Miss C says she thinks Lloyds didn't explain the policy or terms so she would have ticked the PPI box fully trusting its recommendation without understanding the details and how PPI worked. But I think what the form told Miss C is evidence of what was likely touched upon at the sale in some way, even if it wasn't discussed in as much detail as it should've been. So I think when Miss C agreed to the cover she was aware of its basic purpose, the 10% benefit basis and the basic cost. She was also aware of her own intention to always clear the card balance every month.

Miss C has also said she wouldn't have taken the cover if she'd known it included life cover. But the cost of life cover isn't significant and was in any case included in the basic PPI cost quoted on Miss C's application. I don't think knowing the PPI had this extra benefit would've made it seem less worthwhile.

Taking everything into account, what I've seen doesn't persuade me that better information about PPI would've changed Miss C's decision about taking out the cover – although I can understand why Miss C might still think differently.

What I've said above means Lloyds doesn't have to pay back all of the cost of the PPI to Miss C.

But Lloyds will pay back *some* of the cost of the PPI to Miss C 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 Miss C about that. Because Lloyds didn't tell Miss C, 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'm grateful to Miss C for her further points and the extra information she's been able to provide. I've thought about all Miss C's points - including what she's said about being able to claim unemployment benefit and not receiving a copy of the policy that she could refer to. But these points don't change my decision.

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

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

Lloyds should re-work the credit card account and pay back to Miss C the difference between what she owes and what she 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 Miss C 8%\* simple interest if she paid off her credit card at some point.

\*Businesses have to take basic rate tax off this interest. Miss C can claim back the tax if she 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 Miss C.

But Lloyds Bank PLC does have to pay back to Miss 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 Miss C to accept or reject my decision before 23 November 2018.

Richard Sheridan  
**ombudsman**