complaint

Mr D says Lloyds Bank Plc mis-sold him a payment protection insurance (PPI) policy to protect his credit card repayments against accident, sickness and unemployment.

background

Mr D complained to Lloyds about the sale of the PPI. Lloyds replied to say it hadn't mis-sold him the policy. But Lloyds did offer to pay Mr D some compensation in respect of commission it received for the sale of the policy. Unhappy with Lloyds' response Mr D asked this service to step in.

Our adjudicator didn't think the PPI had been mis-sold and thought the commission offer was fair. Mr D disagreed with the adjudicator's opinion. The complaint was passed to me.

In July 2018 I issued my provisional findings on Mr D's complaint and invited both parties to comment and send me any additional evidence they wanted me to think about. A copy of my provisional decision is attached and forms part of this final decision.

In my provisional decision I said I was intending to find the policy wasn't mis-sold. I said this because:

- I thought it most likely Mr D was sold the PPI when he opened the credit card account in July 1983.
- I thought it was most likely Lloyds made it clear that Mr D 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 after so many years.
- Lloyds told us it recommended the PPI to Mr D - so it had to check that the PPI was right for him. And I thought it was.
- Mr D wasn't affected by any of the exclusions to or limits on the PPI cover.
- Mr D was self-employed in 1983. After looking at other early Lloyds PPI policy terms, I didn't think it would've been difficult for Mr D to claim if he became unemployed.
- I thought it possible Lloyds didn't give Mr D all the information it should've in 1983 but I didn't think better information about the PPI would have put Mr D off taking out the cover.

I did however find that 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 D about that. Because Lloyds didn't tell Mr D, that was unfair.

So Lloyds needed to pay back to Mr D any commission and profit share it got that was more than 50% of the PPI premium. And Lloyds needed to pay back to Mr D any extra interest he paid because of that.

Lloyds has already made an offer to Mr D in respect of the commission. But I thought it used the wrong start date of May 1990 when it calculated the offer. I said it needed to recalculate the offer using the start date of July 1983.

Both Lloyds and Mr D have replied to my provisional findings.

my findings

I've again 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 case.

Lloyds has said it accepted my findings and was willing to recalculate the offer using the start date of July 1983.

Mr D has said he didn't need the policy in 1983 as his family would've been able to help him if need be. Mr D has said his partner's income could cover day to day expenditure and he had a lodger providing additional income. Mr D has also said he employed a manager to run his business and his role was mostly just overseeing the business so he wouldn't have had to employ more staff or existing staff more if he was too unwell to work.

I've thought about this but during our investigation Mr D told us that,

"*When someone 'phoned me from Lloyds Bank they were talking about PPI in 1983, it was not until their letter arrived that I realised it was 1990. Although circumstances were similar, by 1990 I had someone managing the business, plus additional staff, and therefore the business would continue whether I was able to work or not. I also had the back up of family if needed.*"

I think the policy was sold in 1983 and not in 1990. And from the above statement Mr D made during our investigation it looks likely to me that in 1983 Mr D would've still been involved in the running of his business and at that time and wouldn't have had an office manager to rely on. I think Mr D's family would've wanted to help him if things went wrong, but the PPI policy would've meant he didn't have to rely on them to help with his credit card repayments.

So I still think the PPI policy wasn't mis-sold to Mr D.

But Lloyds do need to recalculate the commission calculation using 1983 as the PPI start date.

what Lloyds needs to do

Lloyds has already made an offer to Mr D in respect of the commission. But I think it used the wrong start date of May 1990 when it calculated the offer. It needs to recalculate the offer as set out below using the start date of July 1983.

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

Lloyds should re-work the credit card account and pay back to Mr D 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 D 8%* simple interest (15% before April 1993) if he paid off his credit card at some point.

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

my final decision

My final decision is that the PPI policy wasn't mis-sold – so Lloyds Bank Plc doesn't have to pay back all of the cost of the PPI to Mr D.

But Lloyds Bank Plc does have to pay back to Mr D any commission and profit share it got that was more than 50% of the PPI premium.

Lloyds Bank Plc must recalculate its offer in the way I've set out in this decision using the PPI start date of 1 July 1983.

My understanding is Lloyds Bank Plc has already paid Mr D some compensation. So after it has made the new calculation it can deduct what it's already paid Mr D before paying him the balance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 17 September 2018.

Steve Thomas
Ombudsman

copy of my provisional decision

complaint

Mr D says Lloyds Bank PLC mis-sold him a payment protection insurance (PPI) policy to protect his credit card repayments against accident, sickness and unemployment.

background

Mr D complained to Lloyds about the sale of the PPI. Lloyds replied to say it hadn't mis-sold him the policy. But Lloyds did offer to pay Mr D some compensation in respect of commission it received for the sale of the policy. Unhappy with Lloyds' response Mr D asked this service to step in.

Our adjudicator didn't think the PPI had been mis-sold and thought the commission offer was fair. Mr D disagreed with the adjudicator's opinion. The complaint's now been passed to me.

my provisional 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 Mr D's case.

date the PPI was sold

There is a lot of confusion around the date the PPI was sold, so I've firstly thought about this. The credit card account was taken out by Mr D in July 1983. Lloyds only have detailed records of the account and monthly statements from January 2000.

There is no definite record of when the PPI policy was sold but it is known that Mr D cancelled the PPI policy in August 2003.

I note that when Lloyds contacted Mr D by telephone after he complained, it asked him about his circumstances in July 1983. Later, in its written response to his complaint it said the PPI policy started in May 1990. And when it calculated its offer to refund some of the commission it used May 1990 as the start date of the policy.

But when Lloyds sent its file to this service it again said the PPI policy began in July 1983.

I contacted Lloyds and asked it to explain why its commission offer assumed a PPI start date of May 1990 when the credit card account began in July 1983.

Lloyds replied to say it had applied the *"bank's 6 year rule to obtain the calculation start date."* I understand this to mean that when it doesn't have a full record of an account's statements it assumes the policy was sold six years before the earliest statement.

Lloyds also suggested that it had overcompensated Mr D as the earliest statement it had was dated January 2000. So Lloyds said it should've used a PPI start date of January 1994 instead of May 1990.

In its response Lloyds also suggested that when investigating Mr D's complaint about the mis-sale of the policy it had used July 1983 as the sale date. But when calculating the commission redress it had used May 1990 as the sale date.

Finally Lloyds said *"I can therefore confirm that no further redress will be due to Mr D. If Mr D has any further evidence to support PPI being applied to the account from the account open date (July 1983) then we would be happy to recalculate his offer."*

I've thought about Lloyds' explanation, but I don't agree it's fair for it to use either May 1990 or January 1994 as the start date of the policy. Lloyds has applied a *"six-year rule"* but hasn't explained the rationale of this, and it's not something this service would use. We look at each complaint individually and decide what is most likely to have happened given the available evidence.

In this case I think the most likely time for Mr D to have been sold the PPI is when he opened the credit card account in July 1983. And I've seen no evidence from Lloyds to suggest he may have been sold it later.

So I've looked at Mr D's complaint assuming the PPI policy was sold in July 1983, the same time as he took out the credit card account.

was the policy mis-sold?

Having decided the PPI policy was sold to Mr D in July 1983, I've next thought about whether it was mis-sold.

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

The sale took place many years ago so it's not surprising there are no records or paperwork from the time. Mr D has told us he never bought PPI when he took out loans or credit cards unless he was told it was necessary to get the credit. So he thinks it must've been either added without his consent, or he was led to believe he had to buy it.

But the PPI was applied to Mr D's account for 20 years. And the PPI premiums would've likely appeared on his monthly statements during that time. I think if Mr D hadn't agreed to the PPI, or hadn't wanted it, he'd have questioned the premiums at an earlier stage, but I haven't seen any evidence that he did. On balance I think it's most likely Lloyds made it clear that Mr D 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 after so many years.

Lloyds has told us it would've recommended the PPI to Mr D 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 it was.

It looks like Mr D wasn't affected by any of the exclusions to or limits on the PPI cover. For example he's told us he didn't have any medical conditions which wouldn't have been covered.

Mr D has told us he was self-employed in 1983. I don't have a copy of the exact terms and conditions of the policy from 1983. But I've looked at other early Lloyds PPI policy terms, and I don't think it would've been difficult for Mr D to claim if he became unemployed.

Mr D said he had an insurance policy which would've covered him for six months if he became too ill to work. But understandably he has no details of this. However the PPI policy would've paid a benefit for up to twelve months if he became unwell. So I still think it would've been useful to him if things went wrong. So I think Mr D had a need for the PPI cover.

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

Which means Lloyds doesn't have to pay back all of the cost of the PPI to Mr D.

But Lloyds will pay back *some* of the cost of the PPI to Mr D 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 D about that. Because Lloyds didn't tell Mr D, 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 D has said - including what he's said about family support and that he had employees that could've continued his business if he couldn't work. I've no doubt Mr D's family would've wanted to help if Mr D became unwell but it's not guaranteed they'd be in a position to help when Mr D needed it. And the policy would mean he wouldn't need to rely on them to help with the credit card repayments. And if Mr D asked his employees to cover his work while he was unwell, he'd likely have needed to pay them. So I still think he'd find the policy benefit useful. So these points don't change my decision.

what Lloyds needs to do

Lloyds has already made an offer to Mr D in respect of the commission. But I think it used the wrong start date of May 1990 when it calculated the offer. It needs to recalculate the offer as set out below using the start date of July 1983.

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

Lloyds should re-work the credit card account and pay back to Mr D 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 D 8%* simple interest (15% before April 1993) if he paid off his credit card at some point.

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

my provisional decision

For the reasons set out above, but subject to both parties' responses to this provisional decision, I'm intending to make the following findings:

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

But Lloyds Bank PLC does have to pay back to Mr D any commission and profit share it got that was more than 50% of the PPI premium.

Lloyds Bank PLC has already made an offer to Mr D and paid him some compensation. But I think it used the wrong start date when it calculated what it owed him.

So Lloyds Bank PLC must recalculate its offer in the way I've set out in this decision using the PPI start date of 1 July 1983.

My understanding is Lloyds Bank PLC has already paid Mr D some compensation. So after it has made the new calculation it can deduct what it's already paid Mr D before paying him the balance.

Steve Thomas
ombudsman