FINAL DECISION	
complaint by:	Mr E
complaint about:	the firm
complaint reference:	
date of decision:	April 2009

This final decision is issued by me, Robert Short, an ombudsman with the Financial Ombudsman Service. It sets out my conclusions on the dispute between Mr E and the firm. Under the rules of the Financial Ombudsman Service, I am required to ask Mr E either to accept or to reject my conclusions, in writing, before 24 May 2009.

I have considered all the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances of this complaint. For the reasons I set out below I have determined the complaint in favour of Mr E and have made an award against the firm.

summary of complaint

The dispute is about the sale of a payment protection insurance (PPI) policy in connection with a credit card account with the firm in April 2007.

background to complaint

a) events leading up to the complaint

Mr E was in his late 50s and was employed as an area manager in the education sector. In early 2007 he was contacted by the firm and invited to take out a credit card, on the basis that it would be excellent to have "just in case" or "for emergencies". During the application phone call with the firm on 10 April 2007, a PPI policy was sold to him. The firm acted as an authorised insurance intermediary for this purpose. The PPI cover was applied to Mr E's credit card account with immediate effect.

b) Mr E's complaint and the firm's response

Mr E complained about the sale of the policy. He said that the firm did not fully explain the terms and conditions of the policy. He also considered that the salesperson had been "pushy" and did not listen to his comments, to the point where he felt he could not refuse the PPI policy. Because of that, he did not consider that he had been put in a position to be able to make an informed choice about whether to purchase the policy. The PPI policy was subsequently cancelled in September 2008 following Mr E's complaint. But he also requires the firm to provide a refund of all the premiums he had paid since April 2007, as he considered the policy had been mis-sold.

The firm set out its position in the matter in a letter dated 1 October 2008. It stated that its salespersons did not give advice or make recommendations as part of its PPI sales process. Although it did not record all of its phone sales calls, the firm said that it was confident its training and assessment processes, as well as its sales scripts, were sufficiently robust to ensure that its salespersons gave customers enough

information to be able to make an informed choice about PPI. The firm added that it did not require signed confirmation to enable it to apply PPI to a customer's credit card account.

In Mr E's case – and notwithstanding that there was no call recording – the firm maintained that he provided his verbal agreement to proceed with the policy. The firm says that accordingly the terms and conditions of the policy were issued to him, with a clearly stated right to cancel within the first 30 days if, on reflection, he decided that the policy did not meet his requirements. The firm also stated that regular PPI premium deductions were shown on each monthly credit card statement. For these reasons, it declined Mr E's request for a premium refund.

Mr E felt the firm's response was inadequate and he referred a complaint to this Service. Our adjudicator considered the matter and issued his assessment in March 2009.

In summary, our adjudicator concluded that the firm had failed to meet its responsibilities when explaining the main features of the PPI policy – so that Mr E could make an informed choice about whether to purchase it. He upheld the complaint and asked the firm to pay the appropriate redress. A copy of the assessment was also sent to Mr E.

Mr E has not responded. The firm responded by letter dated 18 March 2009 and has separately provided copies of the sales scripts that were in use at the time that Mr E purchased his PPI policy – along with copies of associated training manuals, which include "objection handling" guidelines for its salespersons. It maintains that the documentation it has submitted to us demonstrates that Mr E was provided with sufficient information at point of sale.

The firm has requested a review and decision by an ombudsman as it is entitled to do in accordance with our procedures. I have summarised its representations, as contained within its letter of 18 March 2009, as follows:

- The firm says it did not provide advice about the policy or recommend it to Mr E.
- It says it is confident that its sales process was compliant and that its staff were trained and assessed to a high standard. It says training processes were stringent and designed so that ongoing monitoring would ensure compliance with regulatory requirements.
- It says it disclosed the necessary information – relating to optionality, cost, features and benefits, limitations and exclusions, and cancellation – *"openly and fairly"* so that Mr E would have been able to make an informed choice about the policy.
- It notes that the sales script required its salesperson to tell Mr E that the cost of the policy was 79p per £100 of his statement balance. In addition, it stipulated that Mr E be asked to confirm his agreement *"to pay the monthly premiums"*. That particular method of explaining cost is considered to be meaningful to customers and in line with regulatory requirements.
- In the firm's view, the only reasonable interpretation by customers of its salesperson's reference to the fact that the policy covers their repayments is by reference to the minimum sum payable each month, in accordance with the terms and conditions of the credit card agreement.
- The firm considers that unemployment and sickness benefit are not limited in such a way as to require further explanation to the customer beyond what is contained within the script. The script describes sufficiently the

core benefit in terms of a customer's minimum repayment. Furthermore, the 12-month limit on unemployment claims is made clear in the script.

- The firm says that its script requires the salesperson to obtain the customer's explicit consent to proceed with the sale on a limited information only basis. However, the precise location of that requirement within the script is not the subject of regulation and, in any event, the sales script contains three forms of "consent". The firm says that the phone sale will be abandoned at any point where the customer states that he/she does not wish to proceed.
- Indeed, the firm says only a very small proportion of its phone sales are successful and that overall only a modest percentage of customers with its card have a PPI policy. It pays only modest incentives to its sales staff and monitors their performance closely.
- The firm notes its script specifically asks *"…would you like me to add this to your account today?"* and if the customer answers negatively, the salesperson will talk through the relevant sections of an "objection-handling" sheet. However, the firm does not agree that this process is designed to "capture" a sale, rather than simply furnish the customer with more information to consider.

In the light of this ongoing dispute, it is for me to formally determine the merits of this complaint.

I previously issued this decision in provisional form to both parties. Mr E has not responded. The firm has responded by email to say that it does not agree with the outcome and the conclusions that have been reached – and that it is satisfied that its previous correspondence clarifies its position. It therefore, does not have any further representations to make.

my findings

I have considered all the evidence and arguments very carefully from the outset – including the firm's response to our adjudicator's conclusions – in order to decide what is fair and reasonable in all the circumstances of this case. Having done so, I have come to the same overall conclusions as our adjudicator, and for broadly the same reasons.

a) relevant considerations

This sale was made after the introduction of FSA regulation of insurance mediation. While the general principles that I need to consider in assessing cases such as this are in large part similar both before and after regulation by the FSA, it is important to note the relevant regulatory regime that applied at the time. The FSA Principles apply to all authorised firms including the firm (acting as an insurance intermediary).
Of particular relevance to this dispute are:

- Principle 1 (integrity):
  "A firm must conduct its business with integrity."

- Principle 6 (customers' interests):
  "A firm must pay due regard to the interests of its customers and treat them fairly."

- Principle 7 (communications with clients):
  "A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading."

- Principle 8 (conflicts of interest):
  "A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client."

- Principle 9 (customers: relationships of trust):
  "A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment."

In addition, it is relevant to take into account the more detailed rules set out in "ICOB" (the Insurance Conduct of Business Rules), including (as this sale was primarily conducted by phone) those parts of ICOB that relate to handling certain "distance contracts", especially ICOB 8.3 on disclosure.

I also need to take into account the law (and especially the provisions of insurance law), industry codes and good industry practice.

In this respect, it is relevant to note that there has for some time been regulation or 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). The non-statutory provisions no longer apply as specific requirements on those selling insurance, but I consider they still represent a helpful general guide to good industry practice.

Taking the relevant considerations here into account I, like our adjudicator, conclude that the overarching question I need to consider in this case is whether the firm gave Mr E 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 transaction that he was entering into and the insurance that he was buying.

I must also consider whether in giving any advice or recommendation, the firm took adequate steps to ensure that the product it recommended was suitable for Mr E's needs. Overall, and taking account of these factors, I must determine this dispute between Mr E and the firm by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case.

As our adjudicator explained, neither Mr E nor the firm has been able to provide much information about the specific sale for me to consider. I agree with our adjudicator that it is disappointing the firm can provide little by way of evidence as to what actually happened at the point of this particular sale, such as a phone recording.

As I have already explained, the firm has, however, provided a copy of the sales scripts that were in use when Mr E purchased his policy. I have also received further information from the firm about its training, sales advice, quality monitoring and "objection handling" in the period in which the sale took place.

I have, therefore, considered a document called “Insurance – Sales Skills/Objection Handling Feb 2007” (called here Sales Skills 2007), which I understand was the training/“objection handling” guide in use in relation to sales of PPI with the firm’s credit cards at the time that Mr E’s policy was sold.

I agree with our adjudicator that it seems unlikely that, in practice, this type of material would be followed word for word. Indeed the fact that these scripts *etc* form only a broad guide to what transpired is something I have observed in other cases where the transcripts of calls *have* been available. Nevertheless, I agree in the absence of a call recording in this case, that these documents represent the best information I have at present about the most probable general content of this sale.

I also agree with our adjudicator that any attempt to seek further information around personal recollections of the call – from either Mr E *or* (if he/she could now be identified) the salesperson – would add little if anything to the information available to me, given that the parties will be unlikely to recall precise details of the call so long after the event. And there is a risk that their recollections will now, in any event, be influenced by the points already raised in this complaint.

In the circumstances, I am satisfied that I have sufficient information to reach a decision on the merits of this case. I have decided that the complaint should be upheld. The firm should, therefore, compensate Mr E. I set out my reasons for this conclusion below.

b) did the firm give advice?

The firm says it did not formally give advice. I, like my adjudicator, can see that in practice there might be some doubt about that – particularly in light of the guidance that the firm gave to its salespersons about handling objections. Mr E says that he was approached by the firm when he had no particular intention to take out a credit card or indeed to buy an insurance product. I have no reason to believe that it was particularly in Mr E’s mind to take out the credit card, let alone purchase a PPI policy. Rather, it seems to me that this was actively promoted as a concept by the firm.

In fact, the firm’s own training documentation refers to “promoting” the product. Certainly, from a customer perspective the firm’s sales process might well have appeared as a recommendation or advice. But for the present purposes of this particular case, like our adjudicator, I have proceeded on the basis that the firm did indeed simply provide limited information over the phone and sought (or should have sought) Mr E’s agreement to purchase the policy.

c) did the firm provide information that was clear, fair and not misleading?

Having considered the evidence available to me in this case, I conclude that the firm failed to ensure that it gave Mr E 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 transaction that he was entering into.

I agree with our adjudicator that the firm did not pay adequate attention to Mr E's information needs when it sold the PPI policy to him. Specifically, I am concerned that the firm:

- failed to gain explicit consent from Mr E to providing limited information in securing this sale and did not make clear the implications of proceeding on this basis;

- did not set out a clear account of the costs and key benefits of the policy in a manner that would give Mr E a reasonable opportunity to make an informed choice; *and*

- adopted a sales process that had significant risks that clear consent to purchase was not in fact obtained from Mr E (what is sometimes called assumptive selling).

Indeed, overall from the evidence available to me, I have concluded that the firm sought to achieve a sale by means that, in my view, fell well below the standard required by regulation and good industry practice and so failed to act fairly in its dealings with its customer.

I discuss these points in turn, first by reference to the phone conversation during which the firm says Mr E agreed to purchase the policy, and second with reference to the information the firm sent to Mr E after the phone call.

d) limited information

Under the regulatory rules prevailing at the time of the sale, it was a requirement of every insurance sale carried out over the phone for the salesperson *either* to provide full information (including the full terms and conditions of the policy) before the contract was concluded, *or* to obtain the customer's explicit consent to receiving only limited information. In the Financial Service Authority's opinion it would be impracticable, for most insurance policies, to provide full information by phone. So if the sale is to be concluded by phone it was essential that the firm should obtain explicit consent to proceed on the basis of limited information only.

The sales-script guidance document I have seen relates solely to the sale of PPI. It outlines in bullet point form under 11 headings the issues that (I assume) the firm considered its salespersons should at least in part cover in the sales process. Following "Intro" there is a section on "What is covered?" – then "Cost", then "Information about [the firm] and the policy". So after a brief summary of the product and its costs (points I will return to later) the script says:

> *"Can I add this to your account today?*
>
> *I will now run through the other details that you need to know in order for me to add that to the account. I will summarise these for you however further information about [the firm] and the policy is available on request and will be sent to you with the policy documentation. Is that okay?"*

Later in the script there is a heading “Consent”. Here the firm’s document says:

> *“As I mentioned earlier, further information about [the firm] and the policy details are available on request, other than that are you happy to have received the summary information I’ve provided today?”*

The firm notes in its script made available to its staff that consent must be granted before the sale can proceed. But in my view, even taken at face value neither part of the sales process represents a clear and adequate means of obtaining explicit consent for a “limited information” sale. Both questions are complex in form, in such a way that it would not have been clear to a customer what in practice they were agreeing to. And neither provides a clear route for a customer to consider the option of declining to proceed on the basis of limited information.

In this case, the firm’s annotation on Mr E’s account shows that it recorded that Mr E had given consent during this sale. But in my view, the process by which it did this was inadequate to provide any material assurance that, in fact, such consent was given.

Accordingly, I conclude that the firm failed to gain explicit consent from Mr E to providing limited information in securing this sale – and did not make clear the implications of proceeding on this basis.

e) informed choice

In this section I have considered the standards that, in my view, would have applied – had the firm, in fact, obtained consent to provide limited information. That is – what level of information it might be reasonable to expect the firm to have disclosed in a “limited information” distance sale of this policy.

A customer considering a purchase of such a policy will essentially need to understand a fair account of both the likely costs and the likely benefits of the policy. That includes an understanding of the restrictions or other terms that might reasonably be expected to limit the payment of benefits, in circumstances that are likely to be of significance to the customer. Of course, this will not be a complete account of such matters if this was a “limited information” sale. But that still means the critical facts should be clearly disclosed.

On price, the firm’s sales script explains the cost of cover in the form of “79p per £100” of the statement balance. As our adjudicator suggested, this means that there is no clarity about whether this is annual or monthly, nor any ready way for Mr E to assess the likely cost of this policy over a meaningful period. I have noted all that the firm has said about the explanation of cost within the sales script being clear to customers.

However, I also note that in a subsequent script, introduced for use by salespersons only months after Mr E’s policy was sold, an illustrative example of the cost of the policy was provided: *“The cost is 79p per £100 of the balance on your monthly statement. e.g. a) £500 balance = £3.95 …”* To my mind, this appears to suggest that there was a degree of recognition that the explanation of cost in the firm’s earlier scripts was inadequate and efforts were made to enhance it accordingly.

The firm has also suggested that because its script required its salesperson to ask whether the customer agreed to *“pay the monthly premiums”,* it should have been clear to its customers that the policy was funded by regular monthly premium

payments. However, I am aware that this question appears at the end of a list of questions on *eligibility*. It is inserted into the script some time after the cost in terms of pence per £100 of statement balance has been explained, as well as *after* the customer has been asked whether he/she wants the PPI cover added to the credit card account.

On the benefit side, the firm emphasises in its sales script that *"[you will] be covered".* But it is far less clear about exactly what this means. Strictly, the benefit under the policy sold to Mr E is normally a payment of 5% of the balance at the date of claim each month. Typically, therefore, it is in effect a means of paying only a little more than the minimum repayment required under the card agreement.

The 5% figure is mentioned in the script at the end of the "*What is covered?*" section – after a note that life cover up to a maximum of £30,000 is provided under the policy. The firm's Sales Skills documents in contrast do not mention 5% but uses a range of far more general terms to describe the benefits – for example, "*protect your balance*", "*pay your monthly card repayments for you*", or even *"you won't have the added worry of having to pay your balance with [the firm] because we'd be doing that for you*".

The firm has suggested that its customers would have realised that what it actually meant by *"your credit card repayments"* earlier within the script was the minimum monthly sum required under the agreement. However, I do not agree that most customers would conclude that this was the case, particularly those that would run their accounts by regularly paying in more than the minimum repayment each month.

It is obviously difficult to know for certain what conclusion they would have reached. But what does seem fair to say, is that customers would most likely not have unequivocally understood what the monthly benefit payable would be, in the event of a claim when they agreed to purchase the policy. A clear presentation of both the likely costs and the potential benefits of the policy seem to me to be integral to enabling the customer to make that informed choice.

Overall, it seems to me that the firm's sales process did not provide a fair and adequate description of the costs and benefits of the policy to enable customers to make their own informed evaluation of the product.

f) optionality and assumed sales

Mr E has told us he does not remember much about the transaction. But he recalls that the salesperson was "pushy" and did not listen to what he had to say, resulting in him finding it very difficult to say "no". That is not entirely surprising, as the consent process is not clear. As noted above, early on in the sales script the salesperson asks, "*Can I add this to your account today?*" The script itself does not explain what happens if the customer says anything other than "yes" – as the script goes on to "*run through the other details that you need to know for me to add that to your account*". Then, after the section on eligibility, the customer is to be asked, "*Do you agree to pay the monthly payments*?"

Again the Sales Skills and objection handling documentation provides a fuller context:

> *"Objection Handling is one of the main challenges when promoting Payment Protection Cover as more often than not the Customer will decline the option*

> *of taking the policy out. Each Specialist should* ***always make every effort to try and overcome the Customer's objections by handling at least 2 objections****. In doing so, we are taking more opportunities to maximise sales, as well as providing the Customer with a more informative description of how the policy could benefit them."* [my emphasis]

While providing more information about the policy would no doubt be of assistance, this is not in reality how the sales staff were asked to operate. There is advice on ensuring that the customer is prevented from having *"more control of the call"* – and advice on how to understand objections as meaning something more akin to a request for further assurance.

So, for example, the document explains that an objection, "*It's too expensive ..."* can be seen as meaning, *"it's not that I don't like it or think its unnecessary, but I just can't afford it. It's just more than I want to pay. I need more information to justify going ahead."* So the suggested response is, *"I appreciate that you might find it too expensive, however should your income be affected through sickness, unemployment etc [the firm] could step in and make your monthly card repayments for you. This is one less thing to worry about ..."*

Almost all of the training documentation is written in a similar vein. It adopts telesales practices, with a view to overcoming the objections raised by customers to make the purchase being promoted by the firm. While it raises the subject of typical compliance breaches and the need to treat customers fairly, the substance of the document largely contradicts these messages through an emphasis on *"capturing the sale".*

Such content in formal training documentation only serves to reinforce in my mind that salespersons were encouraged to be unwilling to accept that customers might *not* wish to purchase PPI. The firm has said that if the customer declines PPI at any point in the call, the sale is abandoned. But this is contradicted by the "objection handling" and sales skills documentation. Indeed, it appears reasonable to conclude that those selling PPI on the firm's behalf were trained to place heavy emphasis on how the policy would potentially benefit customers in almost all circumstances – in order to actively overcome objections or lack of desire to proceed that might be expressed during a call.

There is nothing inherently objectionable about the active promotion of an insurance product or its sale during a phone conversation. But there are obvious pitfalls if the environment encourages pressurised sales and what are sometimes called "assumptive sales" (that is, where the salesperson assumes a sale has been made but does not, in fact, secure the clear and unambiguous consent of the customer to the sale).

In this case, the firm has drawn my attention to specific points where it feels it has been compliant with the relevant regulations. I see that the script includes compliance-based points and suggests some information was, in fact, provided about the basic nature of the product. But I think it is right to look not just at the stated policy and detail that the firm has emphasised in its response, but also at the overall impression that Mr E would be given by the sales process.

This was not a case of a firm that focused fairly on the information needs of its customers – nor did it simply actively promote its product. Rather, the firm designed a process that was concerned with securing sales through the careful emphasis of the stated positive points of the policy – without also providing a reasonably balanced account of the costs and restrictions. The customer's rights to decide whether to

proceed with only limited information – and indeed whether to proceed with the purchase at all – were given insufficient weight. This was, in my view, a failure to pay due regard to the interests of the firm's customers and a failure to treat them fairly.

Turning to the specifics of Mr E's complaint in this case, I cannot of course be certain what happened during the relevant call. But on the basis of the evidence available to me, and for the reasons set out above, I do not think that the firm has demonstrated it was likely to have conducted a sale that met the relevant requirements of the time. And there is nothing from Mr E's circumstances that suggests he had special knowledge of, or interest in, policies of the type the firm sold. Accordingly, I think it more likely than not that the conversation with Mr E, during which this sale was made, fell materially short of the standards required of a seller of insurance at that time – and that Mr E suffered clear detriment as a result.

g) subsequent information

The firm has made much of the fact that "full information" was sent later and that Mr E could have considered this and cancelled the policy if he was not satisfied. It says a policy summary (key facts) document and policy document were sent to Mr E after the phone sale, and that a further updated policy document was issued after this time. The policy document is perhaps of necessity a complex document. But this should not be true of the policy summary. Nonetheless, the summary is in very small and closely-written text. And I doubt very much that anyone other than the most assiduous of readers would pick up essential information about the policy from this. In any event, there is no information in this document about the cost of the policy, and the benefit is not expressed in a way that would enable a customer to be able to make an informed decision as to whether the policy provides value for money.

Further, in accordance with standards of good industry practice at the time, simply sending policy documentation is not the way to correct inadequate or misleading oral disclosure. There was, in my view, inadequate and misleading oral disclosure in this case as part of a poor sales procedure. The documentation sent after the sale was clearly insufficient to rectify the significant errors that appear to me more likely than not to have occurred in the sales call.

Overall therefore I have concluded that the sales process adopted by the firm in respect of the sale to Mr E fell materially short of the standards that were expected of an insurance intermediary at the time. It seems to me that there are at least clear grounds for doubt that: Mr E was given a clear opportunity to accept the sales call on the basis of limited information; that he was given adequate information upon which to make an informed choice about the product and; that he did in fact give clear consent to purchase the product. Such information as was provided was shaped by the imperative of making a sale rather than any genuine effort to consider the information needs or other interests Mr E.

summary of conclusions and findings relevant to the determination

For the reasons set out above, I have concluded that in this case the firm did not take reasonable care to ensure the adequacy of the information provided to Mr E. Overall, I conclude that the firm failed to pay sufficient regard to the interests of Mr E and that it did not treat him fairly. Accordingly, I conclude that I should determine this complaint in his favour.

fair compensation

Having concluded that I should determine the complaint in favour of Mr E, I now need to consider what award to make.

I believe it is fair to try (as far as is now practicable) to put Mr E back into the position he would have been in but for the firm's failings. It is obviously difficult to be absolutely sure what would have happened, had it given Mr E appropriate information and conducted an adequate sales process. Overall, however, it seems to me most likely from the evidence I have seen that, if he had been properly informed, he would not have purchased the PPI policy from the firm. I say this because the policy in my view represented fairly poor value for money for Mr E (a fact that was disguised during the sales process). And I have seen no evidence which suggests to me that he had a particular need for cover of this type that might have encouraged him to value a product of this type highly.

Accordingly, following the general approach proposed by our adjudicator in his assessment of the case, Mr E should be placed back in the position he would have been in, had the PPI policy not been sold. That, in essence, involves a return of premiums (and any interest or charges paid in respect of those premiums) from the time the policy was taken out by Mr E until it was cancelled – to which interest should be added to compensate Mr E for being out of money from the point of payment to the time this award is paid. To this end, I require the firm to:

(A) reconstruct Mr E's credit card account by removing any premiums in relation to the PPI, and any interest or charges in relation to those premiums;
(B) if that produces a credit balance for any period, credit interest on that balance for that period at 8% simple per year; *and*
(C) send Mr E a statement showing the resulting balance on the account (with details of how it was calculated).

I also consider it is appropriate for the firm to pay Mr E additional compensation of £100 for the distress and inconvenience he has experienced. This measure of compensation will also reflect the fact that it rejected a complaint which the firm knew (or should have known) we would uphold and so caused Mr E additional distress and inconvenience.

my decision

For the reasons set out above I determine this complaint in favour of Mr E. I require the firm to pay Mr E fair compensation in accordance with the calculation of redress I set out above. I also require the firm to pay Mr E the sum of £100 as compensation for distress and inconvenience. I make no further award against the firm.

Robert Short
ombudsman