

The complaint

This complaint is about a payment protection insurance (PPI) policy which Mrs M took out in connection with a credit card account. Creation Financial Services Limited has accepted responsibility for this complaint. So I'll refer to the business as Creation to keep things simple.

Mrs M complains that Creation mis-sold her the PPI.

What happened

In March 2006 Mrs M opened a credit card account. Around ten days later, she took out a PPI policy. Creation's told us it's likely the PPI was sold over the phone. The policy was designed to pay part of the balance on Mrs M's credit card each month if she made a successful claim for accident, sickness or unemployment.

One of our adjudicators considered the complaint and recommended that it should be upheld. In summary, he said that Mrs M wasn't working when she took out the PPI policy. So she wouldn't have been able to claim for the main benefits of the policy. This meant he didn't think it should have been sold to her.

Creation didn't agree with the adjudicator's view, so the complaint's been passed to me.

My provisional findings

After considering all the evidence, I issued a provisional decision on this complaint to Mrs M and to Creation on 2 February 2022. I said:

"Creation has provided a copy of Mrs M's application form for the credit card. It says that in the section on employment, Mrs M ticked a box to say that she was self-employed. So it doesn't accept that Mrs M wasn't working when she took out the policy.

The copy of the form is of poor quality and is difficult to read. But I've looked at it closely, and accept that it looks as if the "self-employed" box was ticked. However, it also looks as if another box in the employment section was ticked too. That box was marked "other". The tick in that box appears to be particularly bold, as if it's been gone over more than once with a pen for emphasis. I also think it's possible that the words "self-employed" were manually crossed out, although given the poor quality of the copy, it's not possible to be sure. But even if the words "self-employed" weren't crossed through, my view is that it wasn't clear from the credit card application form what Mrs M's employment status was. And I don't accept that the application form shows that she was working when she took out the PPI.

The credit card application form made no mention of PPI. Creation has told us that Mrs M took out the policy ten days after she opened the credit card account. And it says that this was most likely during a phone call. I agree that this seems most likely, given that Mrs M didn't take out PPI when she applied for the credit card. PPI was sometimes sold, for example, when a cardholder phoned to activate their card, and it may be that this is what happened here.

The PPI policy terms and conditions that Creation has sent us show that to make a successful claim on the policy for unemployment, a self-employed person would need to have permanently ceased to trade because they couldn't pay their debts as they fell due.

Even if (which I don't accept) Mrs M was self-employed, and even if she was told about the conditions for a self-employed person to make a claim during the phone call, I don't think she'd necessarily have understood what this might mean for her. I consider that the need for a self-employed person to have ceased trading permanently in order to claim was onerous.

And I think it's a significant restriction that Creation should have explained clearly to Mrs M before she bought the policy.

I accept that it's likely that Mrs M would have been sent a policy document. But that would have been after she took out the PPI policy. What's more, the restriction is buried away in a large amount of small, closely-typed text. And I consider that Mrs M could easily have missed it.

So based on what Mrs M has told us, and on the evidence provided, I'm not satisfied that Mrs M was working when she took out the PPI. So I'm not persuaded that she'd have been able to take advantage of the policy's main benefits. But even if she was, as Creation claims, self-employed, I'm not convinced that Mrs M would have taken out the PPI if Creation had drawn her attention to the circumstances in which a self-employed person could make an unemployment claim."

And I explained that based on what I'd seen so far, I was intending to uphold the complaint, and to require Creation to put things right by doing as I've set out under the heading "Putting things right" below.

Further submissions

Creation has told us it accepts my provisional decision. Mrs M hasn't responded to my provisional decision, and the time for doing so has now expired.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I don't think there's any good reason to depart from the findings I set out in my provisional decision.

Putting things right

Creation should put Mrs M in the financial position she'd be in now if she hadn't taken out the PPI policy:

- A. Creation should find out how much Mrs M would owe on her credit card if the policy hadn't been added to it.

So it should remove the PPI premiums added, as well as any interest charged on those premiums. It should also remove any charges that were caused by the mis-sale of the PPI – as well as any interest added to those charges.

Creation should then refund the difference between what Mrs M owes and what she would have owed.

If Mrs M made a successful claim under the PPI policy, Creation can take off what she got for the claim from the amount it owes her.

- B. If – when Creation works out what Mrs M would have owed each month without PPI – Mrs M paid more than enough to clear her balance, Creation should also pay simple interest on the extra Mrs M paid. And it should carry on paying interest until the point when Mrs M would have owed Creation something on her credit card. The interest rate should be 8% a year.[†]

- C. Creation should tell Mrs M what it's done to work out A and B.

[†] HM Revenue & Customs requires Creation to take off tax from this interest. Creation must give Mrs M a certificate showing how much tax it's taken off if she asks for one.

Creation may subtract the amount that it has already repaid to Mrs M in respect of commission relating to this PPI sale from the redress shown above.

My final decision

My final decision is that I uphold this complaint. I require Creation Financial Services Limited to put things right by doing as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 31 March 2022.

Juliet Collins
Ombudsman