

complaint

Mr E complains a card protection policy was mis-sold to him by a predecessor of Barclays Bank Plc.

background

In September 2002 a card protection policy was added to Mr E's credit card. In 2013 Mr E complained the policy had been added without his knowledge or consent. Barclays did not uphold his complaint so he came to this service.

Barclays then offered to refund the premiums he had paid together with interest of 8% simple per year. However Mr E said he had never paid the balance of his credit card off and so interest of 8% simple per year would not sufficiently compensate him. He also said he should be refunded the charges that had been applied for going over his credit limit and compensated for Barclays' poor handling of his complaint.

The adjudicator agreed that interest of 8% simple per year did not adequately compensate Mr E and recommended that Barclays hypothetically reconstruct his account to put him back into the position he would have been in if the premiums had not been applied.

Barclays did not agree. It offered to pay interest at the contractual rate of the credit card but said it would not hypothetically reconstruct the account. Mr E did not accept this so the complaint has been referred to me for a decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Mr E says he did not agree to take out the card protection policy. Although the policy administrator initially said it had received a loss report under Mr E's policy in 2008, it has now confirmed no loss report was processed and it has no evidence it was Mr E that had contacted it. The policy administrator has also confirmed the various card registrations made under the policy may not have been done by Mr E.

I do not believe I need to reach an opinion on whether or not Mr E consented to the card protection policy. This is because, even if he did, I am not persuaded he was given sufficient clear, fair and not misleading information in order to put him in a position to make an informed choice whether or not to purchase it. To make an informed choice, I consider that a consumer needs to understand the main benefits of the policy and any significant terms, conditions or restrictions that applied.

Barclays says the policy was sold over the phone but has not provided a copy of the sales script that would have been followed or the documentation that would have been sent. I am therefore unable to conclude that Mr E was provided with clear, fair and not misleading information.

I have considered whether Mr E would have acted differently if there had been no shortcomings in the sale and I am satisfied by his evidence that he did not want or need the

benefits the policy provided. I have carefully considered the activity on the policy but because of the possible explanations provided by the policy administrator, this does not alter my findings.

Overall, I conclude that sufficient regard was not paid to Mr E's interests and he was not treated fairly when the card protection policy was added to his credit card account. I have therefore gone on to consider what would represent fair compensation in the circumstances.

fair compensation

In cases where I conclude it is most likely a card protection policy has been mis-sold, I am usually satisfied that a refund of the premiums paid – together with interest at a rate of 8% simple per year – puts the consumer back into the position they would have been in if they had not had the policy. However in some circumstances I am satisfied that does not sufficiently compensate the consumer and that further compensation is due.

I have carefully considered Mr E's credit card statements and I note that he did not pay off the balance of the credit card at any point that he held the card protection policy. Although he did sometimes pay more than the minimum payment, there was always a significant balance on his credit card and for long periods of time he did make the minimum payment each month. Also, whilst I do note that there was a period of time when Mr E was either at, or over, his credit card limit, my findings are that for the majority of the time he held the card protection policy, he was actually significantly under the limit of his credit card.

In these circumstances I am satisfied that neither 8% simple interest nor interest calculated at the contractual rate of the credit card would adequately compensate Mr E. Instead I require Barclays to:

- A. Carry out a hypothetical reconstruction of Mr E's credit card account to find out what the balance of the credit card account would be if he had paid the same monthly payments, but the card protection policy had *not* been added to it.

This will involve Barclays removing the policy premiums that have not already been refunded, any interest that was charged on the premiums and any charges (and interest on those charges) that would not have applied if the policy had not been added to the account.

Barclays should then pay Mr E the difference between the current balance and what the current balance would have been without the policy.

- B. Pay Mr E interest at 8% simple per year* on any credit balance for any periods when the reconstructed account would have been in credit for the period it would have been in credit.

*I understand Barclays is required to deduct basic rate tax from this part of the compensation. Whether Mr E needs to take any further action will depend on his financial circumstances. More information about the tax position can be found on our website. Mr E should refer back to Barclays if he is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Mr E feels he should be compensated for hardship he incurred as a result of the card protection policy but I am satisfied the above will compensate him for any charges he would not have incurred if he had not held the policy. Additionally, he feels he should be compensated for the time he has spent complaining and the way in which Barclays handled his complaint. Pursuing a complaint is naturally stressful and inconvenient and we would not normally recommend compensation for this. Having considered the available evidence – and although I know this will come as a disappointment to Mr E – I am not persuaded Mr E has suffered distress and inconvenience sufficient to warrant an additional award.

my final decision

For the reasons outlined above, my final decision is that I uphold Mr E's complaint and I require Barclays Bank Plc to pay Mr E fair compensation as set out above. I make no other award against Barclays Bank Plc.

Laura Layfield
ombudsman