

complaint

Mr B says Capital One (Europe) plc mis-sold a payment protection insurance (PPI) policy to him, for his credit card.

background

In 2001 Mr B bought a monthly premium PPI policy from Capital One. The policy was to meet part of his credit card repayments if he was off work because of accident or sickness, or if he lost his job. It also gave him life cover. At that time, it cost 89p for every £100 of the balance on his card statement each month.

Mr B has raised various issues about how the PPI was sold to him. These include that he doesn't remember being told about PPI, or being given a choice whether to have it. And he doesn't think he needed it, or agreed to buy it.

Our adjudicator felt his complaint should be upheld, as he didn't think Capital One had made it clear enough to Mr B that the PPI was optional. And he didn't think it had made the cost and benefits of the policy clear enough to him, either.

But Capital One doesn't agree. So the complaint's been passed to me to decide.

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 Mr B's case.

I've decided to uphold Mr B's complaint. I'll explain why.

Mr B doesn't remember how he came to buy the PPI. And the information I've been given by Capital One about that, based on its records, isn't very clear either.

Capital One says he applied for his credit card by post, and filled in an application form (which I've seen) with a box ticked to say he wanted PPI. But it says it didn't add PPI to his card at that time. And that when it spoke by phone with him some weeks later, Mr B said he didn't want PPI - although he did buy card protection cover, which isn't part of this complaint. Capital One says it then rang him a few days after that, to try to sell PPI to him, and this time he agreed to have it. So it was then added.

Even though they're very limited, I think Capital One's records are likely to be right and the PPI was sold during this second phone call. So I've focused on that call, and looked to see if Capital One made it clear to Mr B that he had a choice whether or not to buy PPI. And whether there's any evidence to show that he actually agreed to have it. Capital One says it would only have added PPI to Mr B's card account after getting his consent. But Mr B says he doesn't recall being offered a choice, or agreeing to it.

I've not been given any notes or recording of this call. Capital One has referred us to a general script it thinks might've been used, but I don't know if it was - or, if so, whether Capital One's adviser stuck to it. So I don't think it'd be fair to rely on it. Which means I don't know what was said. And I've not seen anything to show me clearly that Capital One presented the PPI to Mr B as optional, and that he decided to buy it.

I don't think the fact that he'd filled in an application form over a month before, with a box ticked to have PPI, means he would've realised on this call that he had a choice. He probably didn't remember anything about the form by then. And it's not clear why he would've changed his mind and agreed to have PPI, only a few days after saying on the earlier call that he didn't want it - especially bearing in mind the good sick pay he tells us he'd have got from his job.

Capital One says Mr B had already got his card by the time he bought the PPI, so he must've known it was optional. And I've thought carefully about that. But in my view Capital One hasn't shown clearly that Mr B was given a choice - or, if he was, that he actually agreed to have the PPI. So I think it's fair and reasonable to uphold his complaint.

I've looked too at what information Capital One gave him about the cost and benefits of the PPI.

Mr B and Capital One are agreed that Capital One didn't recommend the PPI to him. So it didn't need to find out about Mr B's circumstances, and check the policy was right for him. But Capital One still had to give him good enough information about its cost, benefits and main features, so he could decide whether to have it. Based on what I've read and been told, I don't think it did that.

As I've said, I don't know what he was told about PPI on the sales call. Mr B doesn't remember it being explained to him. And in my view Capital One hasn't shown that Mr B was given all the information about the PPI that he should've been, before he agreed to buy it. In particular, I don't know whether he was told he'd have to pay interest on the PPI premiums, if his card balance wasn't cleared each month. Or that he'd still have to pay the premiums if he made a claim, which would've reduced the benefits he got.

The policy could've paid him benefits for up to 12 months, if he made a claim. But it would only have paid 10% of the outstanding balance on his card, each month. Mr B has told us he didn't feel he was at much risk of being out of work. And that he thinks he would've got six months of full sick pay, then six months' half pay, if he was off work because of illness or injury. And he says he had some savings too.

Taking all this into account, I think he could probably have made his card repayments for quite a long time, without PPI. On balance I don't think he would've wanted the policy, if he'd properly understood its cost and benefits. And although Capital One may've sent him written details of the policy after he'd bought it, that wouldn't in my view be enough to put right any failings in the sales call.

So it's likely I would've upheld Mr B's complaint on this basis too. But as I've upheld his complaint for other reasons anyway, I don't have to decide this issue.

putting things right

Capital One should put Mr B in the financial position he'd be in now if he hadn't taken out PPI. As far as I know, his card account is still open and the PPI policy is live. So the policy should be cancelled, if it hasn't been cancelled already, and:

- A. Capital One should find out how much Mr B would owe on his credit card, if the policy hadn't been added to it.

So, it should remove the PPI premiums added to his account, 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.

Capital One should then refund the difference between what Mr B owes and what he would've owed.

If Mr B made a successful claim under the PPI policy, Capital One can take off what he got for the claim from the amount it owes him.

- B. If - when Capital One works out what Mr B would've owed each month without PPI - Mr B paid more than enough to clear his balance, Capital One should also pay simple interest on the extra Mr B paid. And it should carry on paying interest until the point when Mr B would've owed something on his credit card. The interest rate should be 8% a year.[†]
- C. Capital One should tell Mr B what it's done to work out A and B.

[†] HM Revenue & Customs requires Capital One to take off tax from this interest. Capital One must give Mr B a certificate showing how much tax it's taken off, if he asks for one.

my final decision

For the reasons I've explained, I'm upholding Mr B's complaint.

Capital One (Europe) plc is to pay him the compensation I've described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 18 February 2016.

Chris Langford
ombudsman