

complaint

Mr S complains that Canada Square Operations (CSO) mis-sold payment protection insurance (PPI) to him when he took out a personal loan in May 2005. At the time of the sale, CSO was trading as Egg.

background

Our adjudicator thought this complaint should be upheld because CSO didn't make it clear the PPI was an optional product. CSO agreed with the adjudicator's view. But it added Mr S would've taken the policy even if he'd known it was optional. So it asked for the matter to be looked at again.

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 S's case.

Having done that, I've decided to uphold his complaint. And I'll explain why.

Mr S thought he'd applied for the loan over the internet before May 2005, but CSO told us the PPI was sold to him over the telephone. It may be that Mr S's memory has faded. And I'm more swayed by CSO confirming it was sold during a telephone call, so I looked for more evidence about the call itself.

Unfortunately, CSO didn't have a recording of the call so I don't know exactly what was said to Mr S. But it did send us a call script. I don't know if the CSO representative said every single word in the script, but I think it's likely that he/she mainly followed it. And it gives me a good idea of the topics which were discussed.

CSO said it agreed with our adjudicator that the optional nature of the policy wasn't made clear in the call. And I also agree with the adjudicator. I saw the loan agreement didn't say Mr S didn't have to buy the policy if he didn't want it. He didn't have to sign separately for it or tick a box to consent to buying PPI. And I don't think the call script made it clear that he had a choice to refuse the PPI.

CSO more recently added that I shouldn't uphold the complaint because Mr S would've bought the policy anyway – even if it had been made clear it was optional – because of his circumstances at the time. But I think CSO has misunderstood how we look at complaints.

If I'm upholding a complaint because a business didn't make it clear the consumer had a choice about buying PPI (like in this case) I don't need to look at what the consumer would've done if the policy had been shown as being optional. This is because a consumer needs to know he/she has a choice. But if the consumer doesn't know they even have a choice - the assumption they may not have bought PPI is stronger – and the basic element of free choice has been taken from them.

So I don't need to look at what Mr S would've done if he'd been given a choice. And because I don't think CSO made it clear the policy was optional, it means I think the policy was mis-sold from the start. And that conclusion alone is enough to uphold this complaint.

my final decision

My final decision is that I uphold this complaint and I make the following award against Canada Square Operations Limited:

Mr S borrowed extra to pay for the PPI, so his loan was bigger than it should've been. He paid more than he should've each month and it cost him more to repay the loan than it would've. So Mr S needs to get back the extra he's paid.

So, Canada Square Operations Limited should:

- Work out and pay Mr S the difference between what he paid each month on the loan and what he would've paid without PPI.
- Work out and pay Mr S the difference between what it cost to pay off the loan and what it would have cost to pay off the loan without PPI.
- Add simple interest to the extra amount Mr S paid from when he paid it until he gets it back. The rate of interest is 8% a year[†].
- If Mr S made a successful claim under the PPI policy, Canada Square Operations Limited can take off what he got for the claim from the amount it owes him.

[†] HM Revenue & Customs requires Canada Square Operations Limited to take off tax from this interest. Canada Square Operations Limited must give Mr S a certificate showing how much tax it's taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 30 December 2015.

Amrit Mangra
ombudsman