

## **complaint**

This complaint concerns a regular premium payment protection insurance ("PPI") policy taken out in 2001 by Mr G in connection with a credit card he held with Capital One (Europe) Plc ("Capital One"). Mr G says that the Capital One mis-sold the PPI to him.

## **background**

Mr G took out a PPI policy approximately two months after he applied to Capital One for a credit card. Mr G has given a number of grounds in support of his complaint that this PPI policy was mis-sold to him. Our adjudicator recommended that the complaint should not be upheld.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. In doing so, I have considered the issues in accordance with our general approach to assessing complaints about the mis-sale of PPI, which is well-documented. This includes taking into account the law and good industry practice at the time the policy was sold. In essence, the questions I need to consider are:

- whether, in giving any advice or recommendation, Capital One took adequate steps to ensure that the product it recommended was suitable for Mr G's needs;
- whether Capital One gave Mr G 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 insurance he was buying.

If there were shortcomings in the way in which Capital One sold the policy, I then need to consider whether Mr G is worse off as a result; that is, would he have done something different – for example, by not taking out the policy – if there had been no shortcomings.

Where I cannot say for certain what has happened, I will make my findings on the balance of probabilities, ie what I consider *more likely than not* to have been the case, based on evidence submitted on behalf of both Mr G and Capital One.

I have considered all Mr G's grounds of complaint in reaching my decision. On the basis of the evidence before me, I am satisfied that it is reasonable to conclude that the complaint should not be upheld, for largely the same reasons as the adjudicator.

In November 2000 Mr G applied to Capital One for a credit card. Capital One has supplied this service with a copy of his application form. On the form, when he was asked about PPI, he ticked the box declining to take it. Mr G spoke to a representative of Capital One by telephone in January 2001 when the policy was started.

There have been a number of reasons given for this telephone call to have taken place including activation of the credit card. But, both in its Final Response Letter and again recently, Capital One have said that it was sold during an outbound telemarketing call.

I think that it is more likely than not that the PPI was taken out as a result of an outbound telemarketing call. I say this because I have sight of Mr G's first credit card statement and I see that the account is from 3 January 2001 – 3 February 2001 ie it began on a date prior to him taking the PPI.

The essence of Mr G's complaint is that he did not want to buy a PPI policy in November 2000 and that he would not have wanted it in January 2001. He also says that he did not know he had it until he was made redundant in 2010. At that time, he discovered that he had insurance cover and tried (unsuccessfully) to claim on it.

Although those representing Mr G have said that he had a "*hard sell*", he himself makes no reference to this and, instead, says that he did not want the policy and cannot account for it being added to his credit card account. He speculates that the sales adviser making the call may have made an error in adding the policy or added the policy to boost his or her sales figures. He has told an adjudicator with this service that it was only when he was made redundant that he realised the cost of PPI, and, by implication, that he 'had' it. He provides no persuasive testimony to support what those representing him said about feeling that he had no option but to buy PPI in order to get the credit card, and, if he had done so, that would have been inconsistent with the balance of his other testimony.

Of course, I do not know what was said during the sales call which prompted the addition of this policy to **Mr G**. Whilst I can understand that, looking back, Mr G queries why he would have taken it out given his circumstances at the time, his stance that he did not want PPI does not seem to be supported by other facts. In particular, I see that:

- The cost of PPI was added to his credit card statements each month. Even though this may have been an insignificant amount if he paid off his account each month (as he says that he did prior to being made unemployed), I would have expected him to query even small amounts going out each month if he did not think he had the policy at all. For example, I see that he paid 81pence on his first statement even though he discharged the small amount owing on the card within the period allowed to do so.
- If he only used his credit card rarely or for emergencies between 2001 – 2010 (as he said he envisaged when he took the card out), he would no doubt examine any statement sent to him carefully. And, it seems to me, the PPI charge would have been even more obvious – but he did not cancel it.
- When he was made redundant, he lodged a claim under the policy. So (according to his testimony) he became aware of the policy at this time; but the PPI was not presented on his statement any differently to how it had been presented previously, and it seems just as (and maybe more) likely to me that Mr G would have noticed it previously.

Of course, it may have been sold to him on the basis that, if he maintained a 'nil' balance on his card at all times, he would not have to pay for the policy at all - but he would have it there in case his financial circumstances changed. But, given the evidence submitted to me, on balance, I cannot safely conclude that Mr G did not know or consent to the PPI policy.

Capital One has said that this was not an advised sale and Mr G has said that he cannot remember. As a result, I think that it more likely than not to have been a non-advised sale. So it follows that Capital One were under an obligation to provide Mr G with 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 insurance he was buying.

#### *Mr G's information needs*

Mr G has said that Capital One did not give him sufficient information to put him in a position where he could make an informed decision about whether or not to take the policy. In

particular he says that he would not have taken the policy if he had known that he would need to 'sign on' at the Job Centre before being able to claim for unemployment.

In response, Capital One has said that significant features of the policy would have been explained over the telephone and details of the policy would have been sent to Mr G after he agreed to take it out.

But although Mr G may not have received all the information about the PPI product that he *should* have done before buying it, this does not automatically mean that it was mis-sold to him. It *is* possible that he would have bought it even if he had received all that information, and that is what I have now to decide. Of course, no one knows what Mr G would have *actually* done if this had been the case but, in reaching a conclusion, I have considered both the product itself and his circumstances - and particularly the resources on which he would have relied if he was unable to work and repay any debts he may run up.

Mr G has, in his complaint to this service, said that he had some unspecified amount of savings and family support on which to fall back if he was not working. But I am not aware of how much he had by way of savings – and he was taking this credit card for use in emergencies which would indicate that he could envisage needing credit. Also, reliance on relatives cannot always be regarded as a secure basis for repaying debt as their own circumstances can change. And, I see that Mr G was eligible for the policy and his circumstances did not fall within any of the exclusions. The policy itself offered a benefit which was comparable with that offered by many similar policies and at a similar cost.

I see that Mr G is unhappy that, when he was made redundant, before he could make a successful claim, he had to 'sign on' at the job centre. I do not find this condition a particularly onerous or unusual limitation on a policyholder's ability to make a claim and so I do not consider that it should necessarily have been brought to his attention when he bought the policy. Insurers need some means by which they can determine if a claim should be paid out. And to ask for evidence of registration at a job centre to verify unemployment is, in my view, not unreasonable or out of the ordinary.

As a result, even if his information needs were *not* fully met, I am not able to conclude safely that Mr G would have done anything differently. And I am not persuaded by the evidence that his alternative means of financial support were so good that Mr G may not have felt that he could benefit from the cover provided by the policy in view of the additional financial obligations he was likely to incur on the credit card. Even if Mr G envisaged maintaining a small balance, and trying (as far as possible) to clear it each month, in those circumstances his likely 'spend' on PPI may not have been significant, and was less likely to have been a significant factor in his decision as to whether to purchase it.

It follows that I am not safely able to conclude that Capital One (Europe) Plc mis sold the PPI policy to Mr G. Although I appreciate that he will be disappointed by my decision, I hope he can understand the reasons I have given above

### **my final decision**

My final decision is that I do not uphold Mr G's complaint against Capital One (Europe) Plc and I make no award.

Christine Vine  
**ombudsman**