

complaint

Mr and Mrs T have complained about a payment protection insurance (“PPI”) policy sold to them alongside a secured loan in April 2003. They say that HFS Loans mis-sold the policy.

HFS Loans is a former trading name of Capital One Homeowner Loans Limited. For ease, I’ll refer to them as Capital One in this decision.

background

Our adjudicator explained that Capital One wasn’t covered by us at the time of sale – it was only covered by the Mortgage Code Arbitration Scheme (“MCAS”). This meant that we could only look into the complaint in the same way MCAS would’ve done.

MCAS could only have considered one specific point of Mr and Mrs T’s complaint. So that’s all we can now consider. And based on the available evidence, the adjudicator didn’t think that point should 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.

I’m only able to consider a complaint if it falls within certain criteria set out in law and our case-handling rules. This PPI was sold in April 2003, which was before the sale of insurance by intermediaries (like Capital One) became regulated in January 2005. This means that Capital One didn’t have to be covered by us when it sold this policy. And in fact it wasn’t covered by us at the time.

But as our adjudicator explained, the rules do allow me to consider some complaints about PPI sold before January 2005 where the business was covered by one of our former schemes. And Capital One was covered by one of these schemes (MCAS) at the time. It also went on to be covered by us in October 2004.

This means that I can consider Mr and Mrs T’s complaint against Capital One. But I have to consider it in the same way MCAS would have done.

MCAS could only consider whether and to what extent a firm breached its obligations to a customer under the Mortgage Code. The Code was mainly focussed on mortgage advice and good lending practice rather than the sale of insurance. So it placed very limited obligations on firms when selling PPI. The only obligations it placed on firms when selling PPI were, in summary:

- to give a description of the insurance it could provide;
- to say whether it was a condition of the mortgage that PPI was taken out;
- to say whether PPI had to be arranged by that firm; and
- to give a general description of the cost of PPI.

Mr and Mrs T say that they thought the PPI *wasn’t* optional. They also mentioned more recently in their letter, dated 20 November 2015, that they weren’t aware of how expensive the policy was – the implication being they weren’t given a description of the cost of the PPI.

These points are alleged breaches of the Mortgage Code. So I can consider them here for the reasons I've explained above.

I know that Mr and Mrs T have other concerns about this sales process. For example, they say they weren't made aware that the policy would only cover the first five years of the loan and that the policy was unsuitable for their needs. But I can't consider those concerns because they don't relate to a breach of the Code.

Bearing in mind the points which I *can* consider, for me to conclude Capital One breached the Mortgage Code I'd need to be convinced that:

- it *explicitly* told Mr and Mrs T that they had to take out PPI to get the loan (when that wasn't the case); and/or
- it didn't give them a general description of the PPI cost.

This sale began over the phone. But Capital One says it doesn't have a copy of the call. Nor can it give us a copy of the sales script which would have been used. So I can't be sure exactly what was discussed at the time. Whilst this is disappointing, I don't think it's surprising that this evidence isn't available any more. After all, this sale took place over ten years ago.

I've therefore looked at the documents that are still available from the time of sale to see what is most likely to have happened.

I can see that the credit agreement separately lists the PPI premium as £14,694. I believe this is enough to show that a general description of the cost was given. So I'm satisfied that the Mortgage Code was not breached on this point.

The cost is also shown on the credit agreement as "*Optional Payment Protection Premium*". And it has a separate section titled *Payment Protection* which states "*You have opted for the Payment Protection Plan*", followed by yes/no selection boxes – the "yes" box has been ticked. This suggests to me that Mr and Mrs T ought to have known that the policy was optional.

Mr and Mrs T say the form wouldn't have corrected the misunderstandings from the phone conversation with the agent. But – in the absence of the phone call recordings to support this – and bearing in mind the yes/no options were clearly set out on the form and that Mr and Mrs T signed the document which clearly described the payment protection as being "optional" - I think they ought to have realised that the policy wasn't compulsory.

I can also see that the application form had a separate section for PPI. And its title again suggested that this was an optional extra (my emphasis): "*Repayment Protection Insurance (please tick appropriate box **if required**)*".

I appreciate that Mr and Mrs T believe that they were led to believe the policy was not optional and didn't realise how expensive the policy was. But taking everything into account, I'm not persuaded there is sufficient evidence to show Capital One told Mr and Mrs T they *had* to take out PPI or failed to give them a general description of the PPI cost.

So, overall, I'm not persuaded that Capital One breached the Mortgage Code when it sold PPI to Mr and Mrs T.

my final decision

My decision is that only two of the points of Mr and Mrs T's complaint relate to a breach of the Mortgage Code. So I can only consider those two points. For the reasons given above, my final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before 11 April 2016.

Anthony Harrison
ombudsman