

## **complaint**

Mrs W has complained about being mis-sold a regular premium payment protection insurance ("PPI") policy by Capital One (Europe) plc ("Capital One") in connection with a credit card in 2002.

## **background**

Mrs W considers that Capital One acted unfairly in selling her the policy because she was led to believe it was compulsory and not optional. She also says that she wasn't told about the costs of the policy, and that she had other means of covering her repayments in the event that she couldn't work.

Capital One disagrees saying that the policy was optional, and that it clearly stipulated the cost.

Our adjudicator upheld the complaint. Capital One disagreed with the adjudicator's opinion and the case has been passed to me for review and final 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. Our general approach to considering complaints about the sale of PPI is well-documented and is set out on our website.

I have considered the issues in accordance with this general approach, which includes taking into account the law and good industry practice at the time the policy was sold.

The main 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 Mrs W's needs.
- Whether Capital One gave Mrs W information that was clear, fair and not misleading in order to put her in a position where she could make an informed choice about the PPI she was buying.

I will also consider how the policy was sold. If there are problems with any of the above I will need to then consider whether Mrs W would more likely than not have acted differently as a result.

### *how was the policy sold?*

Capital One says that this policy was sold by way of a postal application and that "*no conversation took place with a Capital One representative*". Mrs W says that there was both a postal and a telephone element to the sale and that she was advised by the sales representative that taking out the PPI would process her application quicker.

While I acknowledge this disagreement between the parties regarding the optional nature of the policy and whether or not Capital One advised Mrs W to take it out, I don't consider it necessary to investigate these issues further. Even if I assume that Capital One provided

Mrs W with information only and not advice, I believe her complaint should be upheld because of failings in the information provided.

*did Capital One provide clear, fair and not misleading information?*

Capital One had a duty to provide Mrs W with clear, fair and not misleading information to enable her to make an informed choice in buying the policy.

The application form does not contain any details of the policy or that there is a cost involved, and the applicant is directed to "*See leaflet enclosed*". Capital One has provided a copy of this leaflet, in which the cost of the policy is set out as "*73p of every £100 of your balance outstanding*". Given the way this cost information was presented I can understand that Mrs W might have found it difficult to calculate the on-going cost of the policy in real terms based on future expenditure.

While the document describes the policy benefit as repaying "*10% of your outstanding balance for up to 12 months*" in the event of accident, sickness or employment (ASU), it does not mention whether or not Mrs W would have to continue to pay her premium in the event of a claim. If she had to, this would effectively reduce the net value of the actual benefit during a claim. This information should have been clearly explained to Mrs W when she was sold the policy and I do not think that Capital One did so.

While I appreciate that this is a summary document, and it states on the leaflet that full policy details will be sent after receipt of the card, I find that Capital One did not sufficiently address Mrs W's information needs and could have provided clearer information to her at the time of her application.

*would Mrs W have done anything differently?*

Having decided that there were shortcomings in the information provided by Capital One, I now need to decide whether or not this affected Mrs W's decision to take out the policy.

The policy provided a reasonable benefit for a reasonable cost, compared with other policies available at that time. This may have been attractive for some customers however, because of Mrs W's circumstances at the time, I consider it unlikely that she would have taken out the policy had she been provided with clearer information for the following reason.

Mrs W has told us that at the time of the sale she had been employed for 3 years and was entitled to 6 months full pay and 6 months half pay in the event of being unable to work. Furthermore she says that she had approximately £6,000 in savings which she could use to make her repayments. Based on the salary information Mrs W entered on the credit card application, this level of savings and employee benefits would have enabled her to maintain her salaried lifestyle for longer than the maximum pay out time for a single claim on the ASU cover. The ASU cover available through this policy therefore duplicated Mrs W existing means of making her repayments.

The policy also provided life and critical illness cover. Mrs W has told us that she had illness cover with Lloyds TSB. I don't know if this duplicated the cover available through the PPI but I think from Mrs W's perspective having an existing level of illness cover might have made the policy less attractive. Taking into account the information provided by Capital One and Mrs W's financial circumstances as a whole, I don't think she would have taken out the policy she had fully understood the cost and benefit.

It follows that I uphold Mrs W's complaint.

### **fair compensation**

Mrs W should be put back in the position she would have been in now if she had taken out the credit card without the PPI policy. I understand both the PPI and the credit card have been cancelled, so Capital One should:

- A. Carry out a hypothetical reconstruction of the credit card account to find out what the closing balance of the credit card account would have been if Mrs W had paid the same monthly payments, but the PPI policy had *not* been added to it.

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

Capital One should then pay Mrs W the difference between the closing balance and what the closing balance would have been without PPI.

- B. Pay Mrs W interest at 8% per year simple<sup>†</sup> 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.
- C. Pay Mrs W interest at 8% per year simple<sup>†</sup> on the difference between the actual closing balance of her account and the reconstructed closing balance from the date the account closed to the date of settlement.
- D. Set out in writing to Mrs W how it has calculated the compensation in A, B and C.

<sup>†</sup> I understand Capital One is required to deduct basic rate tax from this part of the compensation. Whether Mrs W needs to take any further action will depend on her financial circumstances. More information about the tax position can be found on our website.

Mrs W should refer back to Capital One if she 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.

### **my final decision**

For the reasons set out above, I uphold Mrs W's complaint and require Capital One (Europe) plc to pay Mrs W fair compensation in accordance with the calculation of redress I have set out above.

Michelle Boundy  
**ombudsman**