

## **complaint**

Mrs H complains that she was mis-sold a payment protection insurance ("PPI") policy by Capital One (Europe) plc ("Capital One").

## **background**

I issued a provisional decision on this complaint in April 2015. A copy of that decision is annexed to this final decision and forms part of it. In short, I said I was intending to uphold the complaint because I didn't think Mrs H would be able to claim under it for very long. I thought the particular term that would stop her claiming was significant and should have been drawn to her attention. But Capital One hadn't done this. And I thought that, if it had drawn it to her attention, she wouldn't have bought the policy.

I gave both Mrs H and Capital One time to give me anything further that they wished me to take into account. Neither of them wishes to add anything.

## **my findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've looked again at my provisional decision. Having done that, I see no reason to change my mind. So for the reasons I gave in my provisional decision, I think it's fair and reasonable to uphold this complaint.

## **my final decision**

For the reasons given above – and within my provisional decision – I uphold this complaint. I direct Capital One (Europe) plc to pay Mrs H fair compensation in accordance with the calculation I set out in my provisional decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 9 November 2015.

Ross Crawley  
**ombudsman**

## **COPY OF PROVISIONAL DECISION**

### **complaint**

Mrs H complains that she was mis-sold a payment protection insurance ("PPI") policy by Capital One (Europe) plc ("Capital One").

### **background**

In August 2004, Mrs H successfully applied to Capital One for a credit card by post. She didn't buy PPI as part of her application. But once Mrs H received her credit card she had to phone Capital One to activate it for use. And it was during this phone call that she bought the insurance.

The PPI was designed to protect Mrs H if she became unable to work because of accident, sickness or redundancy. If she made a successful claim, the policy would pay 10% of the card's outstanding balance each month until she returned to work.

At the time of sale Mrs H was 59 years old and was employed. She says she wouldn't have received any sick pay from her employer if she couldn't work through illness. And she had no other means of making repayments if she wasn't in work.

Our adjudicator upheld the complaint. She thought that, due to her age, Mrs H wouldn't have been able to claim a benefit under the policy for very long. Capital One disagrees and so the file has been passed to me.

### **my provisional findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

We have set out our general approach to complaints about the sale of PPI on our website and I have taken this into account in deciding Mrs H's case.

In its response, Capital One says that Mrs H would have been able to claim a benefit under the policy until the age of 65.

I have looked at the policy. And I can see that any claim for accident, sickness or redundancy requires Mrs H to stop being at "work". "Work" is defined by the policy as being "in employment or self-employment" and "employment" is defined as being "in paid employment... *and are paying Class 1 National Insurance Contributions*" (my emphasis).

Because she was 59 at the time, Mrs H was very close to the state retirement age. And once she reached that age – and began to receive her state pension – Mrs H would no longer pay national insurance contributions. So, at that stage, she would no longer be "employed" or "working" within the meaning of the policy. As Mrs H could only claim if the accident, sickness or redundancy stopped her from "working", in my view Mrs H would have found it difficult to claim once she reached the age of 60.

This limitation was significant in my opinion and so it should have been drawn to Mrs H's attention. I have reviewed the sales scripts that Capital One says were in use around the time and cannot see this was mentioned. So I don't think it's likely that Capital One gave Mrs H information that was as clear as it should have been about this term.

Would clearer information have made a difference to Mrs H? I think it would have. I say that because Mrs H is unlikely to have thought she would need to claim under the policy before her 60<sup>th</sup> birthday which was only a short period of time away. And so I think she is unlikely to have seen any real value

in the policy. For those reasons I don't think Mrs H would have bought the policy had she been given proper information.

### **fair compensation**

Capital One should put Mrs H in the financial position she would be in now if she hadn't taken out PPI. The policy should be cancelled if it hasn't been cancelled already and:

- A. Capital One should find out how much Mrs H would owe on her credit card if the policy hadn't been added to it.

So, it should remove the PPI premiums added, 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 Mrs H owes and what she would have owed.

If Mrs H made a successful claim under the PPI policy, Capital One can take off what she got for the claim from the amount it owes her.

- B. If – when Capital One works out what Mrs H would have owed each month without PPI – Mrs H paid more than enough to clear her balance, Capital One should also pay simple interest on the extra Mrs H paid. And it should carry on paying interest until the point when Mrs H would have owed Capital One something on her credit card. The interest rate should be 8% a year.<sup>†</sup>

- C. Capital One should tell Mrs H what it's done to work out A and B.

<sup>†</sup> HM Revenue & Customs requires Capital One to take off tax from this interest. Capital One must give Mrs H a certificate showing how much tax it has taken off if she asks for one.

### **my provisional decision**

For the above reasons I currently intend to uphold this complaint and direct Capital One (Europe) plc to pay Mrs H compensation in accordance with the above calculation.

Ross Crawley  
**ombudsman**