

complaint

Mr Y has complained that he was mis-sold a regular premium payment protection insurance (PPI) policy in connection with a credit card by Creation Financial Services Limited ("Creation") in January 2010.

background

Mr Y took out the policy in January 2010 in connection with a credit card, and it is not in dispute that the sale took place by telephone. Mr Y said he was advised to take out the cover, but Creation said that it did not offer advice. Mr Y complained that he felt overwhelmed with information and bulldozed into taking the cover.

An adjudicator at this service considered that Mr Y's complaint should be upheld; Creation disagreed and asked that it be referred to an ombudsman for review.

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 taken into account the law, relevant regulations and good industry practice at the time the policy was sold.

It seems to me that the relevant considerations in this case are materially the same as those set out in the section of our website explaining how we deal with PPI complaints. Therefore the overarching questions I need to consider are:

- Whether, in giving any advice or recommendation, Creation took adequate steps to ensure that the product it recommended was suitable for Mr Y's needs.
- Whether Creation gave Mr Y 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 any shortcomings in the way the policy was sold, I need to decide if Mr Y is worse off as a result. That is, would Mr Y be in a different position to that which he finds himself in now, had there been no shortcomings.

Creation has provided a recording of the telephone call during which the sale took place, together with a copy of the PPI policy from the time of the sale.

Mr Y said that the policy was recommended to him, but Creation stated that the sale was non-advised. From the content of the call recording, I am satisfied that Creation did not provide a recommendation to Mr Y during the call.

Creation was therefore not obliged to take steps to ensure that the policy was suitable for Mr Y but it *did* need to provide 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. I understand that the sales representative was following a script, in providing the information to Mr Y.

During the call, the cost was described as £1.25 per £100 of the outstanding balance, and the monthly benefits as 10% of the outstanding balance, plus life cover.

The representative then went on to describe the significant exclusions, starting with those relating to pre-existing and chronic conditions, and then stating the exclusions relating to the self-employed, saying “*if you are self-employed we would only pay a benefit if your business permanently ceased to trade as a result of not being able to pay its debts*”. This exclusion is important, as Mr Y was self-employed at the point of sale, and thus would have been affected by this exclusion, which I consider onerous. The full wording of the exclusion as set out in the policy document is as follows:

“If the Insured Person is Self-Employed We will only pay benefit if the Insured Person is without work due to the business in which the Insured Person was Self-Employed totally and permanently ceases as a direct result of it being unable to pay its debts as and when they fell due.”

The representative was providing a large amount of information rather quickly, and although he established that Mr Y was self-employed, he did not check Mr Y’s understanding of the exclusions, or explain the implications of the self-employment condition. Having listened very carefully to the call recording, I am not satisfied that the exclusion was presented sufficiently clearly to Mr Y, or that Mr Y understood the extent of the limitation of cover that applied to him so as to be able to make an informed choice. I have also kept in mind that Mr Y said he felt overwhelmed by the information. Overall I consider there to have been shortcomings in the provision of information during the telephone call.

I have also reviewed the policy document that was issued after the point of sale. The exclusion relating to the self-employed is set out in quite small, and rather dense, text, and I do not consider that it was particularly prominent. I also do not consider that it was sufficient to outweigh the shortcomings in the telephone call.

I now turn to whether, had there been no shortcomings, Mr Y would be in a different position to that which he finds himself in now.

Taking all of the evidence into account, my conclusion is that, given the limitation in the cover available to him, had Mr Y been properly informed, he would not have taken out the PPI policy but instead would have proceeded with the credit card *without* the PPI cover.

It follows that I uphold Mr Y’s complaint.

redress

Mr Y should be put back in the position he would have been in now if he had taken out the credit card without the PPI policy. I understand that the PPI policy has been cancelled, and the credit card closed. So Creation 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 Mr Y had paid the same monthly payments, but the PPI policy had *not* been added to it.

This will involve Creation 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.

Creation should then pay Mr Y the difference between the closing balance and what the closing balance would have been without PPI.

- B. Pay Mr Y interest at 8% per year simple[†] 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 Mr Y interest at 8% per year simple[†] on the difference between the actual closing balance of his account and the reconstructed closing balance from the date the account closed to the date of settlement.
- D. Set out in writing to Mr Y how it has calculated the compensation in A, B and C.

[†] I understand Creation is required to deduct basic rate tax from this part of the compensation. Whether Mr Y needs to take any further action will depend on his financial circumstances. More information about the tax position can be found on our website. Mr Y should refer back to Creation if he 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 stated above I uphold Mr Y's complaint and require Creation Financial Services Limited to pay compensation as set out above. I make no further award against Creation Financial Services Limited.

Jan Ferrari
ombudsman