

complaint

Mr K says that Capital One (Europe) plc (COE) mis-sold him a regular premium payment protection insurance (PPI) policy.

background

COE sold Mr K the PPI in 2000 in relation to a credit card. The PPI included accident, sickness and unemployment cover.

Our adjudicator upheld Mr K's complaint but COE didn't agree. So the complaint comes to me to decide.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. We've set out our general approach to complaints about the sale of PPI on our website and I've taken this into account in deciding Mr K's complaint.

how was the policy sold to Mr K?

In March 2012 COE wrote to Mr K to reply to his complaint. They told him he'd bought the policy when he ticked a box to take PPI on his credit card application form in May 1999. But in May 2012 COE emailed Mr K to respond again to his complaint. This time they told him that he'd bought the PPI during a telephone call in July 2000.

COE first told us that Mr K had taken PPI in his postal credit card application in May 2000. COE said the policy started in the middle of May 2000 but that the credit card started at the end of May 2000. But I've seen that application form and it's clear Mr K didn't tick the box on the form to take PPI.

COE then told us Mr K bought the PPI by phone *after* he'd received and been using his card. They told us that their "file notes" showed them this. But they've not sent us a copy of anything that properly explains their different positions on how and when the PPI was sold.

So because:

- the information COE's given about the sale has been so confused
- COE haven't explained why they've got such differing information about the sale

I can't place much weight on what COE's told us about the sale and when it took place.

COE sent us a copy of Mr K's postal application. As I've said, it's clear Mr K didn't tick the box to take PPI but that he did apply for the card by post. And Mr K told us the PPI was sold to him by phone. So I think it's more likely that Mr K applied for the credit card by post. He then received the credit card and called COE to activate it. And I think it was during this activation call that COE sold the PPI to Mr K.

did COE make it clear the PPI was optional?

COE needed to make clear to Mr K that the PPI was optional. Mr K said this wasn't done. He told us he thought he had to take PPI to make sure he received the credit card. I've said it's more likely he already had the card and that he called COE to activate it. Given that this sale took place over 10 years ago, I think Mr K confused applying for the credit card and calling to activate it. So I think it's more likely that Mr K thought he had to take PPI when he called to activate and use the card.

COE haven't sent us a recording of the call or any call scripts that relate to the time this PPI was sold. So I don't know what was *actually* said to Mr K about the PPI. COE sent us some of Mr K's credit card statements which show the monthly cost of the PPI appearing on them. But I don't think that statements sent to Mr K after the PPI was sold to him help me understand whether COE made it clear the PPI was optional during the phone call.

So taking everything into account, I can't say it's likely COE did make it clear to Mr K that the PPI was optional. And so I uphold Mr K's complaint.

what COE should do to put things right

COE should put Mr K in the financial position he'd be in now if he hadn't taken out PPI.

- A. COE should find out how much Mr K would have owed when the credit card account was closed if the policy hadn't been added.

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.

COE should then refund the difference between what Mr K owed when the credit card account was closed and what he would have owed if he hadn't had PPI.

If Mr K made a successful claim under the PPI policy, COE can take off what he got for the claim from the amount it owes him.

- B. COE should add simple interest on the difference between what Mr K would have owed when the account was closed from when it was closed until he gets the refund. The interest rate should be 8% a year.[†]
- C. If – when COE works out what Mr K would have owed each month without PPI – Mr K paid more than enough to clear his balance, COE should also pay simple interest on the extra Mr K paid. And it should carry on paying interest until the point when Mr K would've owed COE something on his credit card. The interest rate should be 8% a year.[†]
- D. COE should tell Mr K what it's done to work out A, B and C.

[†] HM Revenue & Customs requires COE to take off tax from this interest. COE must give Mr K a certificate showing how much tax it's taken off if he asks for one

my final decision

For the reasons I've explained above, I uphold Mr K's complaint.

Capital One (Europe) plc should pay Mr K compensation in line with the instructions set out above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr K to accept or reject my decision before 9 July 2015.

Julian Cridge
ombudsman