

## complaint

Mr L complains that Capital One (Europe) plc (“Capital One”) mis-sold him a payment protection insurance (“PPI”) policy in connection with a credit card in 2003. Mr L complains that the policy was applied to his card without his knowledge.

## background

In my provisional decision of August 2012 I set out why I was minded to uphold the complaint. An extract of that decision is provided below:

“Mr L’s testimony is that he was recovering from the motorbike accident at the time that the PPI was applied to his account. He has given a very full description of his disability and the fact that he was coming to terms with this life-changing event. Mr L has also told this service that his father was looking after his finances at this time and would therefore not have noticed the monthly payment for PPI which appeared on the credit card statements.

However, Mr L has provided evidence from his GP that the motorbike accident took place in 1996. This is three years before he applied for the credit card, and seven years before the PPI was applied to his account. Nonetheless, the evidence also indicates that Mr L’s life was substantially changed by his injuries, and that he has continued to experience problems as a result of them since that time.

Having reviewed the application form for the credit card that he completed in 1999, I can see that Mr L completed the section on employment as “Employed”, but also that he was “medically retired”. I am therefore persuaded that, although he may not recollect all the details of his personal situation when he applied for the card, Mr L was in some form of employment despite his earlier injuries. I note that Mr L had ticked a box on the form to indicate that he did *not* wish to purchase PPI.

Turning to the issue of the telephone call to sell the PPI, I consider it very unfortunate that Capital One has not been able to provide a call recording of the sale. This means that I will have to make my decision based upon what is *most likely* to have happened.

Good industry practice suggests that clear and transparent information on key features of any insurance policy should be provided to the customer *before* they make the decision to purchase the product. Clearly, I cannot be certain how the policy was described to Mr L during the telephone call. However, Mr L had suffered extensive injury during the motorcycle accident, and continued to have ongoing medical problems as a result. In common with most PPI policies, this one would have excluded any claims made as a result of previous injury or existing medical conditions. Indeed, this was clearly highlighted in the exclusion sections of the policy for life benefit, critical illness benefit and disability benefit. It is, of course, possible that Mr L was made aware of these restrictions but that he still chose to purchase the insurance. However, I consider it more likely that he was not made aware that he would, in all probability, not have been able to claim for a wide number of reasons associated with his injury.

Having carefully considered all the evidence in this case, I consider it probable that Mr L’s recollection of the chronological order of events is less than accurate, as evidenced by his report that he was recovering from the accident at the point that the PPI was added to his account. However, I am satisfied that Mr L had experienced a substantial accident and that it impacted severely and continuously upon his life. I am also satisfied that he would,

in several circumstances, have had difficulty making a successful claim on the policy as a result.

Given the lack of suitability of the policy to Mr L's circumstances, I am currently of the view that either, as Mr L alleges, he did not give his consent to the application of PPI to his credit card account, or Capital One did not meet its obligations in drawing the key facts of the policy to his attention at the point of sale. As the costs of the PPI were clearly presented upon Mr L's credit card account for some years, I consider that the second scenario to be the most likely. That said, I do not think that those two alternatives make any difference to my decision."

Having provided my provisional decision for their consideration I asked both parties to let me have their final submissions by September 2013.

### **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 mis-sale of PPI is well-documented and I have considered the issues in accordance with this general approach. This includes taking into account the law, good industry practice and any regulatory rules and guidance relevant to this complaint at the time the policy was sold.

The key issues I need to consider in this complaint are:

- whether Capital One gave Mr L information that was clear, fair, not misleading and sufficient to put him in a position to make an informed choice about whether to purchase the PPI policy; and
- whether in giving any advice or recommendation, Capital One took adequate steps to ensure that the PPI policy was suitable for Mr L's needs.

If there were shortcomings in the way in which Capital One sold the policy, I then need to consider whether Mr L is worse off as a result. That is, would Mr L be in a different position now if there had not been any shortcomings?

As neither party has provided any further evidence or argument for my consideration, I see no reason to depart from the conclusions set out in my provisional decision.

### **redress**

I consider that the appropriate approach to fair compensation in this case is to require Capital One to compensate Mr L by putting him (so far as is now practicable) 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 policy has been cancelled but that the card is still active.

So in this case Capital One should:

- A. Carry out a hypothetical reconstruction of the credit card account to find out what the current balance of the credit card account would have been if Mr L 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 Mr L the difference between the current balance and what the current balance would have been without PPI.

- B. Pay Mr L 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. Set out in writing to Mr L how it has calculated the compensation in A and B.

\* – This part of the compensation is subject to income tax. The treatment of this part of the compensation in Mr L's hands will depend on whether Capital One has deducted basic rate tax from the compensation, and Mr L's financial circumstances. More information about the tax position can be found on our website. Capital One and Mr L should contact HM Revenue and 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 in my provisional decision, I have decided that the complaint should be upheld and that Capital One (Europe) plc should recompense Mr L as set out above. I make no further award against Capital One (Europe) plc.

Roxy Boyce  
**ombudsman**