

Ombudsman Determination

CIFO Reference Number: 16-000340

Complainant: [The complainant]

Respondent: [Company X]

It is the policy of the Channel Islands Financial Ombudsman (CIFO) not to name or identify complainants in any published documents. Any copy of this determination made available in any way to any person other than the complainant or the respondent must not include the identity of the complainant or any information that might reveal their identity.¹

[The complainant] complained about loans provided to him which contained Credit Protection Insurance (CPI) and Payment Protection Insurance (PPI).

Background

It appears from reviewing the material provided that the terms CPI and PPI have been used interchangeably. For the purposes of this determination, I have used the term CPI.

[The complainant] obtained loans with [Company Y] in 2006 and [Company X] in 2011. [The complainant] complained that he had been mis-sold CPI in conjunction with these loans.

In addition, following an accident at work, [the complainant] was unable to work for three years and did not receive payments under the insurance to cover his loan from [Company X].

As a fair and reasonable resolution to the complaint, [the complainant] sought a refund of the premiums paid for CPI.

The case handler upheld the complaint. He considered that it was not made clear to [the complainant] that the CPI was optional and the benefits were not made clear to him. He recommended that [the complainant] should be refunded the CPI payments of £1,333.50 indicated on the form for his 2011 loan with [Company X].

Subsequent submissions

[Company X] did not agree with the case handler's conclusions. It provided CIFO with an internal spreadsheet which illustrated that [the complainant] did not make monthly loan payments, including the CPI, for the full term of his loan.

¹ Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

According to [Company X], the loan term was 30 months. The policy started on 24 June 2011 and was cancelled on 19 November 2012 when [the complainant] cancelled the direct debit with his bank. The premium amount paid was £44.45 and [Company X] says that [the complainant] made 17 payments of £44.45. In total, they say he paid £755.65 for the insurance.

[The complainant] disagreed. When provided with this information by CIFO, he confirmed that he had not received a breakdown of the information presented on the spreadsheet and did not understand its contents.

[The complainant] advised that he understood he had to have CPI to have the loan, with the CPI fully paid at the outset to be valid. [The complainant] has not provided bank statements which would prove the CPI was paid upfront and I have seen no evidence of this.

According to [the complainant], he paid off each of the loans early by taking out a further loan with [Company X].

Findings

[Company Y] loan

Insofar as the loan with [Company Y] is concerned, the loan agreement was signed on 18 July 2006 and the CPI was obtained at the same time.

The legislation that establishes CIFO's jurisdiction in [jurisdiction 1] does not permit us to review complaints arising from actions which occurred before 1 January 2010. This aspect of the complaint appears to relate to an act which occurred in 2006, which would mean that I cannot review it further.

[Company X] loan

According to the documents provided by [the complainant], the [Company X] loan was agreed in June 2011 and CPI was obtained in conjunction with this loan.

I have taken into account the following factors in considering whether the sale of the CPI was fair and reasonable:

1. whether [the complainant] was eligible for the CPI;
2. whether [Company X] made it clear that the CPI was optional;
3. whether [the complainant] would have been affected by any important limitations in a policy; and
4. whether the CPI's costs and benefits were made clear to [the complainant].

[Company X] provided CIFO with a final response to [the complainant's] complaint and a "*Credit Protection Insurance Demands & Needs Sheet*". I note that the sheet contains

statements with the words “*Confirm Advised*” next to them, along with a handwritten tick in the next box. I take the view, therefore, that this was an advised sale of CPI, which is where a financial business either gives a consumer advice or makes a recommendation. I then proceeded to review each of the factors noted above.

1. Eligibility for the CPI

Based on the information provided, I am not aware of any reason why [the complainant] was not eligible for CPI.

2. Whether [Company X] made it clear that the CPI was optional

I have reviewed the “*Credit Protection Insurance Demands & Needs Sheet*” provided by both [the complainant] and [Company X], and I have reviewed the loan agreement and the “*Application For Payment Protection Insurance*” form, both provided by [the complainant]. I can see no clear communication to [the complainant] that the CPI was optional.

3. Whether [the complainant] would have been caught by any important limitations in a policy

Based on the information provided, I cannot see any reason why [the complainant] would have been affected by any policy limitations.

4. Whether the CPI’s costs and benefits were made clear to [the complainant]

I cannot see, from the documentation provided, a specified purpose or benefit of obtaining CPI disclosed to [the complainant]. Given the cost of the CPI (£1,333.50) was a substantial proportion of the overall loan (a 30-month loan of £8,989.67), I consider that if the potential benefits had been disclosed, this may have affected [the complainant’s] decision to take out the policy. I cannot, therefore, conclude that the benefits of CPI were made clear to [the complainant].

As a consequence of the above, and on the balance of probabilities, I consider that it would be fair and reasonable to conclude that CPI was mis-sold to [the complainant] by [Company X].

Case progression

The initial document request by CIFO was made on 3 October 2016. [Company X] provided four pages of paperwork to CIFO, received on 26 January 2017.

The case handler produced his conclusions in February 2017 and upheld the complaint, concluding that [Company X] should refund CPI payments totalling £1,333.50 to [the complainant]. [Company X] rejected the case handler’s conclusions because they considered [the complainant] had not paid the full amount of CPI at the outset. Subsequently, it has taken until September 2017 for [Company X] to confirm the amount paid and provide details of this to CIFO, through the use of a spreadsheet. I note that there

were several errors evident on the spreadsheet. These figures then needed to be put to [the complainant] to allow him an opportunity to comment on [Company X's] new evidence. I consider that [Company X's] actions in the handling of this complaint have caused substantial delay in the resolution of this complaint.

Whether [the complainant] paid the entire CPI amount to [Company X]

As described above, [Company X] provided CIFO with a spreadsheet which they suggest proves that [the complainant] did not pay £1,333.50 in CPI premiums for the whole term of the loan.

I acknowledge that this spreadsheet sets out a number of payments but I am not satisfied with the accuracy of its contents. For example, one column contains the repeated date throughout of "06/04/1993". The total premiums are set out as being £800.10, contrary to [Company X's] claim that [the complainant] had paid £755.65. Finally, the total amount of CPI does not correspond with the amount of £1,333.50 on the initial *Credit Protection Insurance Demands & Needs Sheet* sheet signed by [the complainant].

Furthermore, I note that [Company X] did not provide this information at the time when the initial request was made by CIFO for a response to [the complainant's] complaint.

The spreadsheet confirms the signed documentation from the outset of the loan that the amount paid per month would be £44.45. It does not prove the payments were made by [the complainant]; however, [the complainant] has also not provided any material which would suggest that he made a CPI payment of £1,333.50 at the outset of the loan.

[Company X's] spreadsheet confirms that the total premiums paid were £800.10. In the circumstances, and in the absence of any information from either party which would demonstrate otherwise, I conclude that on the balance of probabilities [the complainant] paid [Company X] £800.10 for CPI on his 2011 loan.

Final decision

My final decision is that I uphold this complaint. The CPI policy was mis-sold.

[Company X] should refund [the complainant] the CPI premium paid of £800.10, together with interest on each overpayment from the date it was paid to date, at 8% per year simple; that is, by applying an annual rate of 8% over the number of days since each CPI payment.

In addition, [Company X] should pay a further £400 to [the complainant] for inconvenience caused and for the subsequent delay in the resolution of this complaint.

[The complainant] must confirm whether he accepts this determination either by email to ombudsman@ci-fo.org, or letter to Channel Islands Financial Ombudsman, PO Box 114, Jersey, Channel Islands JE4 9QG, by **18 December 2017**. The determination will become binding on [the complainant] and [Company X] if it is accepted by this date. If we do not

receive an email or letter by the deadline, the determination is not binding. At this point [the complainant] would be free to pursue his legal rights through other means.

If there are any particular circumstances which prevent [the complainant] confirming his acceptance before the deadline of 18 December 2017, he should contact me with details. I may be able to take these into account, after inviting views from [Company X], and in these circumstances the determination may become binding after the deadline. I will advise both parties of the status of the determination once the deadline has passed.

Please note there is no appeal against a binding determination, and neither party may begin or continue legal proceedings in respect of the subject matter of a binding determination.

Douglas Melville
Principal Ombudsman and Chief Executive

Date: _____