

complaint

Mr C's complaint is about a payment protection insurance (PPI) policy taken out with a hire purchase loan. Creation Financial Services Limited (Creation) offered compensation to settle the complaint but Mr C isn't happy with how Creation has used the compensation.

background

Mr C complained to Creation about the sale of a PPI policy he took out with a loan. Creation didn't uphold his complaint so he brought it to this service. Mr C is represented by a third party.

When our adjudicator recommended upholding the complaint Creation offered to settle it. But Creation used the amount it had worked out was owed to Mr C as compensation, to set against a debt it said Mr C still owed for the loan.

Mr C said the debt was settled after he entered an IVA. So he didn't owe Creation anything and the compensation should be paid directly to him.

Creation had sold the debt to a third party. So our adjudicator said as Creation didn't own the debt anymore, it shouldn't use the compensation against a debt which Mr C now owed to a third party.

Creation disagreed and asked that an ombudsman considered the complaint.

The full background to this complaint can be found in my provisional decision. A copy of that provisional decision is attached and forms part of this final decision. In my provisional decision, I explained why I was partly upholding Mr C's complaint.

Both parties have confirmed they have received my provisional decision.

my findings

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

In my provisional decision I set out why I didn't think it was fair for Creation to use the compensation it owes to Mr C to pay to a third party. I explained why I thought Mr C should only get back what he had actually paid in the 19 repayments he made on the loan. This was a total of £312.36 including the interest. The rest of the cost of the PPI was still in the debt which Creation sold to the third party.

In response to my provisional decision Mr C's representative has said that as part of his IVA payments some further PPI cost would have been paid. It was suggested that 24.6% of the IVA dividends paid to this debt be considered as part of the refund in addition to the amount of the compensation I had indicated. This percentage was based on the normal PPI payment being 24.6% of the normal total monthly loan repayment.

Creation hasn't provided any further information in response to my provisional decision. It was asked to give its comments on any PPI costs repaid under the IVA but hasn't sent any further reply.

I agree that Mr C most likely did pay more for the PPI when making his IVA payments. I've seen a copy of the IVA and this says Mr C's creditors would receive 28p for every £1.00 of debt.

I said in my provisional decision, I think the amount of PPI still left in the debt was £279.17. This means Mr C is most likely to have paid just under £80.00 towards the cost of the PPI if each creditor got 28p for every £1.00 they were owed.

So I am directing that Creation should pay Mr C a total of £392.72 compensation for the cost of the PPI (£312.72 paid with repayments plus £80.00 paid as part of the IVA). Creation should add 8% simple interest to this £392.72 to compensate Mr C for being out of pocket. On the payment of £312.72 this 8% should be worked out from the date each payment was made to the date of final settlement. For the additional £80.00 this should be from the date the IVA was completed to the date of final settlement.

my final decision

My final decision is I'm directing Creation Financial Services Limited to pay Mr C compensation for the PPI policy as I've indicated above. This is for the reasons I explained above and also in my provisional decision, which is attached and forms part of this final decision.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr C to accept or reject my decision before 25 January 2016.

Christine Fraser
ombudsman

Copy of Provisional Decision

complaint

This complaint is about a payment protection insurance (PPI) policy taken out with a hire purchase loan. Mr C is unhappy with how Creation Financial Services Limited (Creation) has used the compensation it offered to settle his complaint.

background

Mr C complained to Creation about the sale of a PPI policy associated with a loan he took out to buy some furniture. When Creation didn't uphold his complaint he brought it to this service. Mr C is represented by a third party.

Our adjudicator recommended the complaint should be upheld and Creation then offered to settle the complaint. Creation used the amount it had worked out was owed to Mr C as compensation, to set against a debt it said Mr C still owed for the loan.

Mr C said he had settled the debt on the loan after being in an IVA. So he didn't owe Creation anything and the compensation should be paid directly to him.

Our adjudicator said it would've been fair for Creation to use the compensation in this way if it still owned the debt. But Creation has confirmed it had sold the debt to a third party. So our adjudicator said as Creation no longer owned the debt it shouldn't use the compensation to set off against a debt which Mr C now owed to a third party.

Creation disagreed and asked that an ombudsman considers the complaint.

my provisional findings

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

Creation has agreed to settle Mr C's complaints about PPI taken out with his loan. So I'm not looking at how the PPI came to be sold to Mr C, which has already been dealt with. I'm only looking at the compensation and how Creation has used this.

I've looked at the calculations Creation has sent. It has offered to refund the cost of the PPI and added 8% simple interest on what Mr C actually paid. This is to compensate him for being out of pocket for what he did pay. Mr C hasn't said he disagrees with the amount offered. Only that he thinks all the compensation should be paid directly to him as he no longer owes a debt to Creation.

First I will consider if it's fair for Creation to use the compensation to reduce the debt it says he still owes. And then I shall also look at the amount of compensation that should be paid.

Mr C took out his loan in 2006 and defaulted on his repayments after 19 months. At the end of 2008 he entered into an Individual Voluntary Arrangement (IVA) with his creditors. This loan debt was included in that IVA. The IVA was completed in 2012 and Mr C, through his representative, said this meant the debt had been settled.

When Mr C entered into an IVA, the debts he owed weren't cancelled. Nor were they cancelled when he was discharged in 2012. Mr C still owed some money for the loan as he didn't repay the full amount, even after the IVA was settled. So although he couldn't be chased for the debt, some of the debt still exists. *If* Creation still owned the debt I would say that it's fair for it to use the compensation to reduce Mr C's debt.

But in this complaint Creation has told us the debt was sold to a third party. So Creation owes Mr C compensation for the mis-sale of the PPI, but Mr C owes a third party for anything that may still be outstanding on the loan debt. He doesn't owe Creation anything.

I've taken account of Creations arguments that it has an agreement with the third party and so the compensation can be used against Mr C's debt. But there is no direct link or relationship between Mr C and the third party. So I don't think it's fair that Creation uses the compensation it owes to Mr C to pay to a third party.

I've then considered the amount of compensation Creation has offered. I've looked at all the figures, calculations and the cost of the PPI. From the information given by Creation it shows the total premium for the PPI added to Mr C's loan was £312.72. Creation has also provided screen shots to show the total interest on this was £278.81. So if Mr C had repaid the loan over the full term of 36 months he would have paid £591.53 for the PPI.

But Creation says Mr C only made 19 repayments and Mr C had also said he didn't repay the loan in full. Based on the figures sent to us Mr C was paying £16.44 each month for the PPI (total monthly repayment £66.83 less loan repayment of £50.39 without PPI). This means Mr C only repaid £312.36 including interest to Creation for the PPI. The rest of the cost of the PPI was still in the debt which Creation sold.

Creations' offer of compensation was for £591.53 plus £172.52 for the 8% simple interest on what Mr C had paid. So in its offer letter it said it was paying £764.00 in total. (On the other figures provided I think this should accurately have been £764.05). It seems to me Creations offer includes the total cost of the PPI. But as Mr C hasn't paid all this I don't think it's fair he should get back the full costs.

When considering mis-sale complaints we look at putting a consumer as far as possible in the position they would be in now if they hadn't bought the PPI policy. So I think the compensation Mr C should get back is what he actually paid for the PPI. But I also think Creation should ask the third party to adjust the debt to remove any PPI costs that still form part of the debt.

So I am intending to tell Creation to pay back directly to Mr C what he actually paid for the PPI in his monthly repayments, plus the 8% simple interest on this amount. In total this is likely to be £312.36 plus the 8% simple interest. The supervisor of the IVA has confirmed it has no interest in the PPI compensation so I can't see any reason why this compensation shouldn't be paid to Mr C.

I also want Creation to ask the third party to amend the amount of the debt sold so that any PPI that was still in the debt when it was sold is removed. This is because although the debt can't be chased it will still appear on the credit file as larger than it should be. Based on the figures I have seen the amount that was still in the debt is likely to be around £279.17 (total PPI costs £591.53 less what Mr C paid £312.36).

my provisional decision

Subject to any further information received from either party, I am intending to tell Creation Financial Service Ltd to pay compensation for what Mr C paid for the PPI, as I have set out above.

So Creation Financial Services Ltd should pay directly to Mr C what he actually paid for the PPI costs plus 8% simple interest. And any PPI cost that was sold with the loan debt to the third party should be removed from that debt, but not paid to Mr C as he has never actually paid this money.

Christine Fraser
ombudsman