

complaint

Mr M bought a regular premium payment protection policy (PPI) with a home shopping account in 1996; the insurer was Aviva Insurance Limited trading as Shop Direct (Shop Direct)

background

Shop Direct agreed that Mr M had been mis-sold the PPI and it made him an offer in 2012 of £4,461.85.

Shop Direct then said that because Mr M was in arrears on his account, it would use all of the compensation to set against the arrears.

Mr M didn't dispute the amount of the compensation but he was not happy that it was used against arrears. He said that Shop Direct didn't tell him it would do this. He also said that he wasn't happy with the way his complaint was handled.

Our adjudicator said that he agreed that Shop Direct could use the compensation against the arrears but he did find some failing with the way that the complaint was handled and awarded £100 in trouble and upset.

Mr M wasn't happy with this and wanted an ombudsman to review the complaint.

my findings

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

Mr M isn't happy with the way the business dealt with the complaint. He is not happy that the compensation was used against arrears. I have thought about this. Mr M has said that at the time the compensation was paid he was in financial difficulty. He said that he had other more pressing debts and that the fact Shop Direct used the compensation payment to pay down arrears caused him a lot of stress and anxiety.

Part of the debt Mr M owed to Shop Direct for his account most likely included some of the costs of the PPI charged to the account, as it seems he went into arrears on the account from 2009.

Shop Direct can set off the compensation for the PPI against a debt owed on the same account, providing it is fair to do so. As the PPI was taken out with, and charged to, Mr M's account with Shop Direct there is a direct association between the debt Mr M owes Shop Direct and the compensation it owes to Mr M. So one can fairly be set off against the other.

Mr M has not provided us with any evidence of his other debts at the time and details of creditors. The business has a right to use compensation against money owed to it. The money that was owed to Shop Direct was still a contractual debt that Mr M owed to it. Just like any other debt he owed. The effect of paying the money against those arrears means that now Mr M reduced his debt with Shop Direct. There are circumstances where we consider other debts to be more pressing. These are debts such as for mortgage payments or rent where an individual is under threat of a house being repossessed. But Mr M hasn't

told us he had any debts of this sort. He hasn't given us any evidence that this was the case at the time or provided us with any further evidence since we asked in February this year.

Because of this, I am satisfied that Shop Direct used the compensation fairly and I won't be telling it to pay it directly to Mr M.

Mr M has expressed concern that his debt was sold to a third party. This was done after the PPI compensation had been removed from the debt he owed to Shop Direct and legally Shop Direct is able to sell debts in this way.

Mr M has also complained with the way that Shop Direct dealt with his complaint. He has said he made many phone-calls to find out when the money would be paid and that he was sent confusing letters. In the final response from Shop Direct dated 23 November 2012 I can see that it did say "*The total redress will be sent to you by cheque, therefore please allow 7 to 10 days for this to arrive*". I agree that if Mr M was in financial difficulty at the time, this may have confused him and led him to believe he would receive the payment himself. I also have some sympathy with the fact that he had to call the business to clarify what was happening and can see it would have caused him stress.

Our adjudicator made an award of £100 to recognise this and the business agreed to pay. I have carefully thought about this. Our job isn't to punish the business, it is to look at both sides of the dispute and decide what is reasonable based on all of the information. I note that the business did rectify this within three months of making the error and confirmed that the compensation was used to pay arrears. I also listened to the business about the fact the letter on its system differs from the one sent to Mr M and it cannot explain why. Shop Direct rectified this 3 months later by letter dated 13 February 2013. I agree that this is still within a 6 month time scale.

But I do feel that Mr M has grounds to be upset by this mishap and waiting for the payment only to find out he wasn't going to receive it direct. For that reason I am awarding a further £150 in trouble and upset bringing the total trouble and upset payment to £250.

my final decision

For the reasons I have set out above, I think Aviva Insurance Limited has used the compensation due to Mr M fairly in setting it against the debt he owed the business on his credit account. But I am directing that Aviva Insurance Limited pays to Mr M another £150 in trouble and upset, making the total trouble and upset award £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 July 2017.

Miranda Bates
ombudsman