

complaint

Mr M complained to Capital One (Europe) plc (Capital One) about a payment protection insurance (PPI) policy taken out with a credit card. Capital One used the compensation it offered to reduce the debt Mr M owed on the credit card. Mr M wants Capital One to pay the compensation directly to him.

background

Mr M complained to Capital One about the sale of a PPI policy associated with his credit card.

Capital One wrote to Mr M in September 2012 and said it was willing to settle his complaint. Capital One said in the offer that it would offset any refund against any defaulted balance on the credit card, then send a cheque for any amount that was left to Mr M.

Mr M signed the acceptance of offer form and returned this to Capital One. Capital One used the compensation to set off against the debt on the credit card account as Mr M had some years earlier defaulted on his credit card payments.

Mr M said he had settled the debt on the credit card through a third party debt recovery agent. So he didn't owe Capital One anything and the compensation should be paid directly to him.

Our adjudicator said what Capital One had done with the compensation was fair and reasonable.

Mr M disagreed with the view of the adjudicator and has asked an ombudsman to consider the complaint. Mr M is represented by a third party.

my findings

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

Capital One has agreed to settle Mr M's complaints about the mis-sale of the policy on his credit card ending 5090. So I am not looking at how the PPI came to be sold to Mr M. I am only looking at how Capital One has paid to Mr M the compensation for the PPI charged to this credit card account.

I have decided not to uphold Mr M's complaint.

I have looked at the offer made by Capital One which was for a total of £286.41. The offer letter sent to Mr M that this was made up of PPI premiums charged to the card of £255.31 and interest charged on those premiums of £31.10. As Mr M would not have been in credit on his card account if it was reconstructed without the PPI, Capital One said no further compensation was due to Mr M for being out of pocket.

Mr M defaulted on his credit card payments and there was a debt on the credit card account. A third party debt recovery firm obtained a "*short settlement*" of the debt for Capital One in January 2007. Mr M said when he paid this partial amount to the debt, he thought his account was settled in full.

I have seen a copy of the letter sent to Mr M by the debt recovery firm. The debt owed at the time was £1,604.31. The letter says that the debt recovery agents would accept £1,130.00 in "Short Settlement". The debt recovery firm were acting on behalf of Capital One and the debt has never been sold to any third party.

There was nothing in this letter to say that the debt was settled in full or that the account was closed. It seems to me Capital One had taken a commercial decision not to pursue the full amount of the debt at the time. But Mr M never repaid the full amount he owed for his spending on the credit card to Capital One. I understand a balance of £442.03 remained as a debt on the card in 2012 when the PPI compensation was offered.

The charges for the PPI when it was active had been applied to Mr M's credit card. The total cost of the PPI, as set out in the offer by Capital One, was £286.41. As Mr M had a debt on the card of £442.03, after the short settlement in 2006, it is right that the cost of the PPI, which would have formed part of this debt, should be set against the outstanding amount. Mr M had never paid the £286.41 to Capital One as he owed them more on his card when he defaulted than the cost of the PPI.

Capital One 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, credit card account 5090 there is a direct association between the debt Mr M owes Capital One and the compensation it owes to Mr M. So one can fairly be set off against the other.

I have looked at the offer letter and acceptance form that Mr M signed. On the acceptance form it says, immediately below where Mr M signed:-

"Once we receive your form we will offset any refund against any outstanding defaulted balance or over limit amount, within 10 working days. By defaulted balances we mean any balance outstanding after the credit facility has been revoked. We will then issue a cheque for any remaining refund"

I think this made clear how Capital One was intending to use the compensation. Mr M knew he had defaulted on his credit card so should have realised what Capital One was saying. He signed the acceptance form aware of how Capital One was to use the compensation.

I have seen nothing to show Mr M had any more pressing debts so I can't say it was unfair for Capital One to use the compensation it owed to Mr M to set against his debt with them for the credit card.

Following enquiries from this service Capital One has recently confirmed that account ending 5090 had no further charges applied as a result of the PPI. So the amount it offered and then set against the credit card debt is the full amount of compensation due to Mr M.

As the amount of the compensation due to Mr M was less than the debt he owed to Capital One for his credit card debt there is nothing that needs to be paid to Mr M.

my final decision

For the reasons set out I agree that it was fair for Capital One (Europe) plc to use the compensation due to Mr M to set against the debt on his credit card account.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr M to accept or reject my decision before 13 May 2015.

Christine Fraser
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