

complaint

Mr B's complaint is that Direct Auto Finance Limited (DAFL) has used the compensation from a mis-sold payment protection insurance (PPI) policy to reduce his outstanding debt. Mr B has asked that the compensation be paid directly to him.

background

In 2005 Mr B took out a loan and at the same time he was sold the PPI policy. The single premium for the PPI policy was added to the loan. In June 2007 DAFL sold the outstanding debt to a third party.

In 2010 Mr B complained to DAFL about the sale of the PPI policy. In 2011 Mr B brought his complaint to this service.

In December 2012 DAFL wrote to this service. In its letter DAFL agreed to uphold Mr B's complaint. DAFL said that it had calculated the redress in line with this service's published guidelines, the calculations resulted in the sum of £1,498.52 being due to Mr B. DAFL said it would use this amount to reduce Mr B's outstanding debt.

An adjudicator from this service wrote to DAFL in August 2013. In her letter the adjudicator explained that as DAFL was no longer the legal owner of the debt it should not use the compensation from the mis-sold PPI policy to reduce the balance.

DAFL disagreed with the adjudicator's findings and has asked that an ombudsman review the complaint.

DAFL has told us it repurchased an amount from the third party equivalent to the compensation due to Mr B. Therefore DAFL has said that it should be allowed to use the compensation to reduce the debt as it is now the owner of that part of Mr B's outstanding debt.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so I am not persuaded it would be fair for DAFL to use the compensation from the mis-sold PPI policy to reduce the balance on Mr B's outstanding debt. I say this for the following reasons.

I have not seen sufficient evidence to persuade me that DAFL did purchase part of the debt back from the third party before using the compensation to reduce the balance.

DAFL has provided an email from the third party which states:

"I can confirm that ##### acquired the above account from Direct Auto Finance Limited (DAFL) on 8 June 2007 with a current balance of £3,566.22. ##### are now the legal owners of this account.

We understand that the account holder has made a PPI claim to the original lender, DAFL. As you are aware, it is the responsibility of the original lender to investigate and respond to any PPI claims made and I am sure you can fully appreciate that this is not something ##### would be able to comment on based on the actions being taken prior to our acquisition.

DAFL have advised us to reduce the original balance of £3566.22 by £1,498.52 in line with the redress offered as a result of the customer's PPI complaint."

In my view this part of the email confirms that DAFL asked the third party to reduce the original balance rather than repurchase it.

The email then contained a screenshot of the third party's internal system which shows the reduction of £1,498.52 as:

"ODADJ original balance adjustment transaction type SCRD".

Again this entry suggests to me that the third party made an adjustment to Mr B's outstanding balance. The entry makes no mention of the sale of that part of the balance back to DAFL.

I do note that in the final part of the email from the third party it states:

"DAFL have repurchased this part of the balance back from ##### as per their previous confirmation to yourselves. The customer has also made payments to ##### towards their outstanding liability totalling £941.71. There remains an outstanding balance on the account of £1,125.99."

I acknowledge this part of the email refers to DAFL repurchasing part of the balance but this seems at odds with the first part of the email and the system records. In addition I note that the final part of the email provides a breakdown of the debt as follows:

<i>"Original balance acquired</i>	<i>= £3,566.22</i>
<i>Payments made towards the account</i>	<i>- £ 941.71</i>
<i>PPI Adjustment</i>	<i>- £1,498.52</i>
<i>Total balance o/s</i>	<i><u>£1,125.99"</u></i>

I note that this calculation again refers to a *"PPI adjustment"* rather than the sale of the balance.

I also note that adjudicator requested further evidence such as internal system screen shots or some form of receipt to show that DAFL had repurchased part of the balance, but DAFL has been unable to produce these.

I have carefully considered all the evidence available and having done so I am not satisfied that DAFL has produced sufficient evidence that it repurchased part of the debt it sold to a third party. Because of this I am not persuaded that DAFL is the legal owner of that part of Mr B's debt and therefore it cannot use the redress to reduce the balance.

my final decision

My final decision is that Direct Auto Finance Limited should recalculate the compensation due to Mr B in line with service's guidelines in order to bring the calculation up to date, and pay the resulting compensation direct to Mr B.

Steve Thomas
ombudsman