

complaint

Mrs D's complaint is about a regular premium payment protection insurance (PPI) policy sold to her by Capital One (Europe) plc (Capital One). Capital One has upheld her complaint but wants to use the redress owed to Mrs D to off-set against the outstanding balance on her credit card. Mrs D believes the redress should be paid directly to her.

background

Mrs D complained about the sale of PPI alongside her credit card which she arranged with Capital One. Capital One agreed to uphold her complaint. However it informed her that it would use the redress she was due to reduce the outstanding balance on her credit card.

An adjudicator at this service has considered the complaint and recommended that the redress should be paid to Mrs D since Capital One no longer owns the debt and therefore it no longer has any contractual rights to the debt.

In response to the view, Capital One said it would buy back the debt from the third party debt collection agency if Mrs D agreed that the redress will be used to off-set the arrears on her credit card.

Mrs D has asked through a third party for her complaint to be considered by an ombudsman.

my findings

I have included only a brief summary of the complaint above, but I have considered all the available evidence and arguments in order to decide what is fair and reasonable in the circumstances of this complaint.

Since Capital One has already offered to make a settlement I have not considered the merits of Mrs D's complaint that the policy was mis-sold. Instead my decision focuses on whether the approach adopted by Capital One concerning the use of the redress to off-set an outstanding balance is fair and reasonable.

Our general approach to calculating redress for PPI mis-sale complaints in connection with a credit card is that Capital One should put Mrs D back into the position she would be in now if she had arranged the credit card without the PPI policy.

In these circumstances we would expect Capital One to reconstruct the account by:

- removing any premiums and interest associated with the PPI premiums;
- if that produces a credit balance for any period, add 8% simple interest on that balance for that period.

The Financial Services Authority (FSA) (now known as the Financial Conduct Authority) issued guidance for financial businesses handling PPI complaints. This guidance states:

"where the complainant's loan or credit card is in arrears the firm may, if it has the contractual right to do so, make a payment to reduce the associated loan or credit card balance, if the complainant accepts the firm's offer of redress. The firm should act fairly and reasonably in deciding whether to make such a payment" (DISP App 3.9.1 G)."

Applying this guidance to the facts of Mrs D's case, the next question I need to consider is whether Capital One has the contractual rights required with Mrs D's outstanding credit card balance.

In this case Capital One does not have the required contractual rights in relation to the credit card account because it sold this particular debt on to a third party debt collection agency and as such does not have the necessary interest in the debt anymore.

I have considered what Capital One has said it would do – buy back the debt – if Mrs D signs the settlement form permitting them to use the redress to off-set her credit card debt. However as things stand Capital One does not own the debt and therefore lacks the legal relationship to the debt to do what it would like to do.

In these circumstances, it is fair and reasonable for the redress to be paid directly to Mrs D.

my final decision

My final decision is to require Capital One (Europe) plc to pay the redress to Mrs D directly. I make no further award against Capital One (Europe) plc.

Emma Ali-Noor
ombudsman