

complaint

Mrs A's complaint is about the amount of compensation she should receive from Shop Direct Finance Company Limited ("Shop Direct"). Mrs A believes she should receive all of the redress payable directly to her.

background

Mrs A complained about a regular premium payment protection insurance (PPI) policy she was sold in connection with a credit account. Following the initial complaint, Shop Direct agreed to uphold the complaint and made an offer to Mrs A.

In agreeing to uphold the mis-sale complaint, Shop Direct has offered an amount and has 'off set' part of that amount against an amount owed by Mrs A on the associated credit account. The remaining balance has been sent to her in the form of a cheque.

Mrs A is not happy that Shop Direct has done this and believes that it should have returned *all* of the redress payable to her. She has also provided some information regarding what an adjudicator from our service has concluded is more urgent debt to repay.

Our adjudicator concluded in a letter to both parties that it was fair and reasonable for Shop Direct to use the compensation to settle the debt on the credit account. However she also gave her opinion that Shop Direct should pay the remaining amount of compensation directly to Mrs A. She considered that Mrs A had pressing debts that she believed took priority over the debt that was outstanding.

Mrs A did not agree with our adjudicator's view with regards to both issues and Shop Direct didn't agree with our adjudicator's view regarding priority debts. Therefore this complaint has been passed to me to make a decision.

my findings

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

Since Shop Direct has already agreed to pay compensation and has already paid part of it to Mrs A and used part to pay an amount owed on the credit account, I do not need to consider the merits of this complaint again here. I need to decide first of all whether the method used by Shop Direct to determine the amount of compensation due, is fair and reasonable.

Our general approach to calculating redress for PPI mis-sales in connection with a credit account is that Shop Direct should put Mrs A back in the position she would have been in now if she had obtained the credit account without the PPI policy.

In order to have calculated fair and reasonable redress for Mrs A, I consider Shop Direct would have needed to:

- A. Carry out a hypothetical reconstruction of the credit account to find out what the current balance of the account would have been if Mrs A had paid the same monthly payments, but the PPI policy had *not* been added to it.

This would involve Shop Direct removing the PPI premiums, any interest that was charged on the premiums and any charges (and interest on those charges) that would not have applied if the PPI had not been added to the account.

Shop Direct should then pay Mrs A the difference between the current balance and what the current balance would have been without PPI.

- B. Pay Mrs A interest at 8% per year simple on any credit balance for any periods when the reconstructed account would have been in credit, for the period it would have been in credit.
- C. Set out in writing to Mrs A how it has calculated the compensation in A and B.

With this in mind, I need to consider Mrs A's complaint namely that:

- She has pressing debts
- She should have received all of the compensation directly rather than have part of it off set to settle the amount owed on the account.

so should Mrs A be given compensation directly because she has more pressing debts?

One of our adjudicators asked Mrs A for evidence that she had more pressing debts than those Shop Direct were seeking to clear with part of the compensation. Mrs A provided some evidence in the form of a letter from a local authority that demonstrates some rent arrears.

Shop Direct does not agree that there are more pressing debts and has already off-set the amount of compensation against the arrears accrued on Mrs A's account.

I have looked at the information supplied by Mrs A that she has submitted in support of her complaint in this regard and considered what I think is fair and reasonable here.

And I have not seen enough evidence to support the adjudicator's view that Mrs A should be given the compensation because she has priority debts that should be dealt with first. Mrs A also has a debt with Shop Direct and I am not persuaded, from the evidence that I have seen, that other debt should take priority over the arrears she has accrued with it.

Moving on, I still need to consider whether it was fair and reasonable for Shop Direct to off-set the compensation to the credit account arrears in the first place.

so was the settlement offered by Shop Direct fair and reasonable? Should Shop Direct have used the compensation to reduce Mrs A's arrears?

I have reviewed calculations provided by Shop Direct, and it seems to me that it has calculated redress in accordance with our guidelines and general approach (given above). So I need to consider whether it was fair and reasonable for Shop Direct to use the amount or not to clear her arrears.

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).”

I would consider it fair and reasonable for Shop Direct in this instance, to “set-off” the compensation payable for the mis-sale of a PPI policy against Mrs A’s arrears on her account – and remove those arrears.

I am aware that Shop Direct purchased back the debt owed from a third party, Cabot Financial. As Shop Direct is currently the legal owner of the debt, in this instance, it is entitled to seek to use PPI compensation to remove arrears on the *associated* account balance where *it has the contractual right to do so*. And in this instance I find that it does.

Finally I note Mrs A’s comments regarding Shop Direct’s responsibilities in notifying her when an account changes hands from it to a third party. I feel in this instance, that I do not need to make a finding in this regard as it does not materially impact the outcome of this complaint.

I conclude that the offer Shop Direct has made is appropriate, fair and reasonable in the circumstances. I see no fault with their actions.

my final decision

My final decision is that I do not uphold Mrs A’s complaint and make no additional award against Shop Direct Finance Company Limited.

Mark Richardson
ombudsman