

complaint

Mr A's complaint is that Capital One (Europe) plc ("Capital One") mis-sold him a payment protection insurance ("PPI") policy when he took out a credit card in 2008.

background

Capital One has upheld Mr A's complaint and offered a settlement it said followed our guidelines. Mr A is unhappy that Capital One planned to use all of the settlement to reduce the arrears on his credit card. Mr A wants the compensation for the mis-sold policy paid to him directly.

The adjudicator didn't think Capital One needed to do anything different. Mr A disagrees and wants an ombudsman to consider his complaint.

Mr A is represented.

my findings

Since Capital One has already accepted that it mis-sold the PPI to Mr A, I do not need to consider that part of the complaint here. What is left for me to decide is whether the method used by Capital One to work out how much compensation Mr A is due is fair and reasonable.

I have included only a brief background to 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 of this complaint. In doing so, I have taken into account the relevant regulatory rules and guidance, as well as the law and good industry practice.

I've decided not to uphold Mr A's complaint.

We expect a business who mis-sold PPI with a credit card to put matters right by putting the consumer back in the position they would be in now if they had taken out the credit card without PPI.

I've carefully thought about how Capital One worked out Mr A's settlement. Capital One has done what I would tell it to do. So I think it worked out the cost of putting matters right fairly.

The final issue to look at is whether it is fair for Capital One to use the extra Mr A paid each month to reduce the arrears on his credit card.

I've looked at the agreement Mr A signed when he took the loan. I've not seen that it says Capital One has 'the right' to use money it owes Mr A to reduce what he owes them.

We normally say it is fair for the lender to use redress to reduce arrears on the same loan. But we may say something different if the debt was sold to another party. And we may say something different if the consumer has more pressing debts that should be reduced instead of this one.

I've looked carefully at Capital One's records. I can see Capital One asked a third party to collect payments from Mr A. But Capital One still owns the debt. So I've gone on to look at the information Mr A gave us about his current financial position.

I see that Mr A is in a debt management plan. Mr A told us he is on a reduced payment plan for his mortgage and council tax. He also said another lender is taking him to court. But the information he gave us doesn't show he has more pressing debts. For example, if he is under the threat of losing his home.

I've taken account of the legal position which allows people to 'set off' closely connected debts. This means Capital One can deduct from the debt Mr A owes them, money that Capital One owes him.

I've carefully thought about what is fair given Mr A's current financial position. Because Capital One has followed our usual approach in these circumstances and because it has done what the law would normally allow, I think its offer to reduce Mr A's arrears is fair. From what I've seen, I don't think Mr A's financial position means Capital One should do something different. So I won't tell Capital One to pay the compensation for the mis-sold policy paid to Mr A directly.

I understand that Mr A didn't accept Capital One's offer.

Capital One says the offer is available for Mr A to accept.

my final decision

I do not uphold Mr A's complaint and I make no award against Capital One (Europe) plc.

If Mr A accepts my decision, Capital One (Europe) plc should work out its settlement again, bringing it up to the date he accepts.

Stefan Riedel
ombudsman