

complaint

Mrs D is unhappy with how Firstplus Financial Group Plc (Firstplus) has used the compensation it offered her to settle a complaint about a mis-sold payment protection insurance (PPI) policy.

background

In 2006 Mrs D took out a secured loan through Firstplus and at the same time was sold a PPI policy. The cost of the premium for the policy was added to the loan so Mrs D paid interest on this.

In 2008 Mrs D was in financial difficulties and declared bankrupt. The loan with Firstplus became part of the bankruptcy. Mrs D was discharged from her bankruptcy in 2011.

In 2013 Mrs D complained that the PPI has been mis-sold PPI and eventually Firstplus agreed to uphold her complaint and said it would pay compensation. But Firstplus said it wanted to use the PPI compensation to reduce the balance of the debt that Mrs D had left on her loan account.

Mrs D said as the bankruptcy had ended, and this debt was part of that bankruptcy, the compensation should be paid to her and not used to reduce anything that wasn't cleared under the bankruptcy.

The full background and information regarding this complaint is in my provisional decision issued in March 2018. A copy of that provisional decision is attached and forms part of this final decision.

Both parties have confirmed they received my provisional decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Both parties have indicated they have received my provisional decision. Firstplus has provided no further comment or evidence.

Mrs D has said she is unhappy with my findings as she had PPI with other businesses and they paid the compensation for mis-sold PPI directly to her after her bankruptcy ended. So she thinks Firstplus should be told to do the same.

The complaint I am considering is only about the PPI associated with the secured loan from Firstplus and so I have only looked at the facts surrounding that PPI and not the details of any other credit and PPI Mrs D may have had with any other business. Each case has to be looked at on the facts and information presented that relate to that credit account and the particular PPI policy associated with the credit. And I cannot comment or consider what other businesses may have done in relation to compensation for mis-sold PPI on other credit Mrs D may have had with them.

The loan Mrs D had with Firstplus was secured against her property and when that property was sold as part of her bankruptcy nothing was paid from the proceeds of sale to Firstplus.

As I have seen no further evidence or information, directly relating to this loan with Firstplus, that affect the findings I made in my provisional decision, there is nothing for me to consider to make me change the findings and outcomes I reached.

In my provisional decision I explained why I felt that what Firstplus had done to settle the complaint about the mis-sold PPI policy was fair. It had stripped out what was still owed for the costs of the PPI from the total loan debt still owed. And had also used the £864.71 that Mrs D had actually repaid for the costs of the PPI to set against the outstanding amount Mrs D had borrowed for her own use and never repaid.

Firstplus had also worked out that for being out of pocket by the £864.71 Mrs D should get some compensatory interest and this amount was £384.36 after tax. Firstplus hadn't used this amount to set against Mrs D's unpaid loan but had paid this amount by cheque to Mrs D. I said it was fair that Mrs D should keep this amount already paid to her.

Having reviewed all the information, I've seen nothing to make me change my mind about the findings in my provisional decision. What Firstplus has done to work out the compensation and how it has used it and paid it is fair.

my final decision

For the reasons I've explained, I'm not upholding this complaint against Firstplus Financial Group Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 10 May 2018.

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Christine Fraser
ombudsman

Copy of Provisional Decision

complaint

Mrs D is unhappy with what Firstplus Financial Group Plc (Firstplus) is intending to do with the compensation it has offered to settle a complaint about a mis-sold payment protection insurance (PPI) policy.

background

In November 2006 Mrs D took out a secured loan through Firstplus and at the same time was sold a PPI policy. The cost of the premium for the policy was added to the loan so Mrs D paid interest on this.

In 2008 Mrs D was in financial difficulties and declared bankrupt. The secured loan became part of the bankruptcy. Mrs D was discharged from her bankruptcy in 2011.

Mrs D complained about the mis-sold PPI in 2013. Initially Firstplus said it could find no PPI on the account. Then in 2014 Firstplus said it had rechecked its records and Mrs D did have a policy and it agreed this had been mis-sold. But Firstplus said it wanted to use the PPI compensation to reduce the balance of the debt that Mrs D had left on her loan account.

Mrs D was unhappy with what Firstplus said it was going to do. She said as the bankruptcy had ended, and this debt formed part of that bankruptcy, the compensation should be paid to her and not used to reduce anything that wasn't cleared under the bankruptcy.

Our adjudicator said that Firstplus could use the compensation to reduce the unpaid loan debt and didn't need to pay it to Mrs D. Mrs D wasn't happy with this and asked for an ombudsman to consider her case.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As Firstplus have upheld Mrs D's complaint that the PPI was mis-sold I am not going to consider any issues about how the policy came to be sold. In this decision I am only considering what should fairly happen to the compensation for the mis-sale.

When Mrs D took out a secured loan for £20,000 in 2006 she bought a PPI policy for a premium of £3,986. This extra amount for the premium was added to the loan, which resulted in Mrs D borrowing a total of £23,986. This loan amount was set as a charge against Mrs D's property, known as a secured loan.

In 2008 Mrs D stopped making the repayments to her loan and entered sequestration – a bankruptcy in Scotland. This meant that all Mrs D's debts were brought into the sequestration and any assets were used to pay something towards those debts if possible.

As part of the sequestration Mrs D's property was sold. When this was done the businesses which had lent money secured against the property were paid first. Anything left over would then have been shared between any other creditors Mrs D had. Once everything possible had been done the bankruptcy was closed. This was in 2011.

Mrs D has provided correspondence from the Trustee of her bankruptcy. Firstplus has also provided its internal records from the time and information received.

The Trustee has stated that it would not be cost-effective to now re-open the sequestration to distribute the compensation for the mis-sold PPI, which is in effect an asset of Mrs D. The Trustee has stated to Mrs D: *"If the First Plus debt was secured and was cleared when your house was sold, and it is not cost effective to re-open the case, then I am happy to confirm that the funds should be paid to you."* Other correspondence from the Trustee indicates that it is not cost effective to re-open the sequestration for £4,000. So Mrs D says in line with what the Trustee said the compensation should be paid to her.

I have read the information provided by Firstplus which indicate that it received no payment towards its loan debt when the house was sold, even though its loan was secured against the property. This was because the first mortgage on the property took all the proceeds of the sale to try to clear that debt.

I can also see that in correspondence from the Trustee in 2014 it is stated that no dividend was paid to any creditors. So it seems the only business that got any payment as part of the sequestration was the business with the first mortgage on the property.

The response from the Trustee to Mrs D says "If the Firstplus debt was secured *and was cleared*". The Firstplus debt was secured but it was not cleared – in fact nothing at all was paid to it when the house was sold.

I have taken account of the law and also the fact this was a secured debt which is in part addressed in the noted to the Certificate of Discharge on the bankruptcy. I have also considered the approach of the Trustee who has indicated they have no interest in the amount of the compensation – that was even if it was as much as £4,000. So I have to decide what is fair and reasonable in all these circumstances.

Taking everything into account, the fact that Mrs D was discharged from the sequestration doesn't mean her debt to Firstplus no longer exists. It meant that Firstplus couldn't ask or chase her to pay back the outstanding debt.

Mrs D borrowed £20,000 from Firstplus and had the use of that money. She only paid back a very small amount of this before she went bankrupt. And, as I've said, despite this being a secured loan nothing was repaid to Firstplus after the sale of the property. So I think it's fair that Firstplus uses the money it worked out Mrs D paid for the PPI (£864.71) to reduce the amount outstanding on the loan which she had for her own use.

There are some additional points I would like to clarify in this particular case. Mrs D defaulted on the loan repayments after paying only £864.71 in total towards the costs of the PPI. The rest of the PPI costs were still in the whole debt that remained unpaid.

So it is right that the PPI amount that was still part of the debt and never paid by Mrs D is stripped out from what she owed to Firstplus. This would put the loan in the position it would've been in if the extra amount to pay for the PPI policy had never been added to the loan. It is also the approach I would expect a business to take in cases where there were no arrears or sequestration and the loan was still active. What hasn't yet been paid for the PPI is removed from the outstanding loan going forward, but it isn't refunded to the consumer as they haven't paid it. It is taken of the outstanding loan. So Mrs D isn't any worse off than any other consumer by Firstplus removing the PPI from what has not been repaid.

The amount that Mrs D actually paid toward the PPI premium, plus the loan interest on the premium, is the £864.71, not the full premium of £3,986 plus interest that Mrs D has said. Firstplus has used that £864.71 to reduce the amount Mrs D never repaid for the loan she'd had for her own use. And as I've said above I think this is fair.

I note that Firstplus sent a cheque to Mrs D for £384.36 (after tax) which was the compensatory interest for Mrs D being out of pocket by this £864.71. As this has been already paid to Mrs D I shall

make no further comment on this element of the compensation. It is fair that Mrs D keeps anything that has already been paid to her.

Finally I note Mrs D says Firstplus sold the debt to a third party and she says this third party told her it does not consider this to be a "live debt". In fact in this case this third party took over the debt business of Firstplus in January 2016, it was not a situation where a business sold and bought a certain group of debts. Firstplus has confirmed that it still has an interest in any of these debts that were part of its business and any payments received on them would be paid to Firstplus by the third party.

In summary I think in all the circumstances of this case, based on everything I have seen so far, I'm satisfied that what Firstplus has done with the PPI compensation for the mis-sold PPI is fair.

my provisional decision

I am not intending to uphold Mrs D's complaint. For the reasons I've set out, based on what I've seen so far I think that what Firstplus Financial Group Plc has done with the compensation due for the mis-sold PPI is fair.

This is subject to any further information provided by either party by the date given at the start of this decision.

Christine Fraser
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