

complaint

Mrs N is complaining that Capital One (Europe) plc (Capital One) mis-sold her a payment protection insurance (PPI) policy. She's unhappy that it's used some of the compensation it's offered her to reduce an outstanding debt.

background

Mrs N is complaining about a PPI policy attached to a credit card she took out through Capital One. In 2014 she complained to Capital One that it had mis-sold her the PPI policy. Initially Capital One didn't think it had mis-sold the policy. So Mrs N referred the complaint to this Service. Our adjudicator thought it had mis-sold the policy so upheld the complaint.

Capital One then agreed it had mis-sold the policy. And it offered her £1,573.72 in compensation. But it used £541.77 of the compensation to pay off a debt it said she still had on the credit card. Mrs N didn't agree she had a debt, because she says she paid it off in line with an agreement she'd made with Capital One in 2010.

Our adjudicator thought Mrs N did still have an outstanding debt. She said that Mrs N had an agreement to partially pay off the debt and Capital One agreed to not pursue her for the remaining debt. But she said the debt still existed. And she thought it was fair for Capital One to use the compensation to pay off this debt. Mrs N didn't agree. She said that the agreement was that the debt was paid off in full and final settlement. So, any money still outstanding was effectively written off. Our adjudicator still thought what Capital One had done was fair. So Mrs N asked for an ombudsman to review the complaint.

my findings

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

Capital One has accepted that it mis-sold the PPI. So I haven't looked at how the policy was sold to Mrs N. Mrs N hasn't said that she thinks the amount of compensation Capital One has offered is unfair. So I haven't looked at whether the offer is fair or not. But Mrs N doesn't think Capital One can use some of the compensation to pay off the credit card. So in this decision I've looked at whether I think it was fair for Capital One to use the compensation it offered to pay off the debt it says she owed. I think it was able to do so and I'd like to explain why.

did Mrs N still have a debt on her credit card when Capital One offered compensation?

Mrs N says that, in line with an agreement she had with Capital One, she paid the credit card debt off in January 2010. So she doesn't think she owed anything on the credit card after then, but I don't agree. Capital One has provided a copy of her credit card statement for January 2010. And this shows that she owed £1,805.89 at the beginning of the month. She then paid £1,264.12. And there was a balance on the card of £541.77 after then. A further bank statement showed that this debt was still on the credit card when Capital One offered Mrs N compensation. So it's clear that Mrs N didn't pay her credit card off in full.

Mrs N says that she'd agreed with Capital One to pay £1,264.12 in full and final settlement of the debt. So, if there was anything outstanding, this was effectively written off. But when she entered into the agreement with Capital One, Mrs N agreed to repay *part* of the debt to

Capital One and Capital One had agreed to not pursue her for the rest of the debt. The remaining debt didn't get written off and still existed. So I'm satisfied that she still owed Capital One £541.77 after January 2010.

was Capital one allowed to use the compensation to pay off the debt?

In compensating Mrs N, Capital One needs to put her in the position she'd be in if she hadn't taken out PPI. As I said, after Mrs N paid Capital One £1,264.12 in January 2010, she still owed it £541.77. And part of that debt was for PPI. Had she not taken out PPI, she wouldn't have owed Capital One as much money in January 2010. And, in paying off the outstanding debt, I think Capital One has returned Mrs N to in the position she'd be in if she hadn't taken out PPI.

Ultimately Capital One owed Mrs N compensation for mis-selling her PPI on a credit card and Mrs N still owed Capital One money on the same card. It seems fair to me that Capital One has just offset one against the other.

And it seems to me that part of the outstanding balance would've been made up of PPI premiums charged to Mrs N's account. So if Capital One paid all the compensation to Mrs N directly, she'd be getting a refund of PPI premiums that she hadn't actually paid. And this doesn't seem fair to me.

my final decision

For the reasons I've set out above, I think that Capital One (Europe) plc was allowed to use the compensation it's offered to pay off what she still owed on the credit card.

Capital One (Europe) plc owed more compensation for mis-selling the PPI than Mrs N owed on the credit card. So it needs to pay the difference to Mrs N directly. I understand that it's already done so. But if it hasn't already paid this, it should also update the offer.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 21 November 2016.

Guy Mitchell
ombudsman