complaint

Mr K complained he was mis-sold payment protection insurance (PPI) with a loan with Capital One (Europe) plc.

background

Capital One agreed that Mr K had been mis-sold PPI and it made him an offer. The offer was made in 2014 for £4,173.70 and it held back £2,641.50 to apply to arrears on the loan.

Mr K was very angry about this. This is because in 2008 he said he had settled the loan with Capital One and agreed a payment of £5,110.00, in full and final settlement of the loan balance.

Our adjudicator agreed there was confusion in how the loan was settled but thought Capital One acted fairly in paying off the outstanding arrears. Mr K didn't agree with this and wanted the matter looked at by an ombudsman.

my findings

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

Mr K hasn't complained about the amount that Capital One offered, only the way it applied the arrears. Capital One has agreed that the policy was mis-sold, so I won't look at how it came to be sold. I will just look at whether the offer is fair.

When a business mis-sells PPI we expect it to put the consumer back in the position they would have been in if the PPI hadn't been sold in the first place, so we expect it to fully refund the PPI premiums and interest and also add 8% per annum compensation for the number of years the consumer was out of pocket because of the PPI.

In this case the PPI was paid for by a single premium policy of £3,839.21 on a loan of around £15,000. The refund offered by Capital One was £4,173.70. We initially considered this wasn't enough because it didn't cover the cost of the premium plus interest but Capital One confirmed the account was previously in arrears and so it refunded the total of what Mr K had paid in PPI before he went into arrears, plus interest. I'm satisfied this was a fair approach.

The issue Mr K complains about is that he previously said he had agreed with Capital One in 2008 that he would only pay £5,110 to settle the loan. He said he understood this was in full and final settlement and that he had nothing further to pay.

He provided a letter dated 8 May 2008 which said "*We have reviewed your proposal and I can confirm your full and final settlement offer of £5,110 for the above loan agreement has been accepted*". At this time the loan was approximately £7,500.00.

Capital One said that this was an error and in 2013 they wrote to Mr K stating they have found an error on his credit file and were correcting it. It said the error would be "*amended to show status of default and partially settled. This is an accurate reflection of your account*". Mr K said he never received this letter.

I have carefully considered this and what Mr K has said. I agree that Capital One should have been clearer in its correspondence about the outstanding balance. I also think Capital One made a mistake not to contact him about the partial settlement until 2013 some 5 years later. Based on the facts before me I am inclined to agree that at the time in 2008 Mr K is likely to have thought he had fully settled the loan. I don't know if Mr K received the letter of 2013 but even if he did, this is some 5 years afterwards and I can understand that he would not necessarily have understood.

The main complaint is that Capital One offset part of the compensation against the outstanding arrears on the account. Mr K thinks Capital One shouldn't have been allowed to do this because he thought the loan was settled. I have carefully thought about this and I acknowledge what Mr K has said and I can see that Capital One didn't acknowledge the error until later. But the key point is that just because Capital One agreed a settlement figure of a lower amount with Mr K, it doesn't mean that this debt no longer existed. It simply means that at the time the loan was settled Mr K benefited greatly from paying off less than he actual owed Capital One and by Capital One agreeing not to pursue him for the outstanding amount.

At the time of reaching the settlement figure Capital One and Mr K didn't know about the PPI compensation, so the settlement figure would have been a bit higher because of that since it included PPI. So when the PPI refund was made in 2014, Capital One did owe Mr K some additional money which it has paid him, plus interest. But I also think Capital One is entitled to look at what was outstanding to it and apply the compensation to reduce that balance since it was not money that belonged to Mr K, it was money that he owed Capital One under his contract with them. Taking into account all of the facts I think Capital One acted fairly in applying the compensation to the arrears.

I am able to award modest compensation if I think the business has not handled the complaint well and that this has caused some trouble and upset to the consumer. I do think errors were made by Capital One in the running of this case and that it caused confusion over whether the loan had been paid off in full. As I have said above, I accept that Mr K probably thought he had fully settled the loan. I note the adjudicator said they would make a payment of £100 for this element of the complaint. I have thought about this more broadly and I think this award should be increased to £200 for the trouble and upset caused to Mr K.

my final decision

For the reasons I have set out above, I think the approach taken by Capital One (Europe) Plc is fair but I am increasing the amount of trouble and upset by £100 to make a total payment of £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 15 February 2016.

Miranda Bates
ombudsman