

complaint

Mr D is complaining that Capital One (Europe) plc ('Capital One') mis-sold him a payment protection insurance ('PPI') policy. He's unhappy that it's used some of the compensation it's offered to pay off an outstanding debt.

background

Mr D took out a PPI policy alongside a credit card with Capital One in 1999. In 2013, Mr D complained that Capital One had mis-sold the PPI policy. Capital One agreed and offered him £1,046.95 in compensation. Mr D accepted the offer and he says he expected Capital One to pay the compensation to him directly. But Capital One said that Mr D still owed £1,008.81 on the credit card. So it used part of the compensation it offered to pay this off and sent him a cheque for the remaining £38.14. Mr D didn't cash the cheque.

Mr D doesn't think he owed Capital One any more money on the credit card. He said that Capital One sold the debt to a debt collection agency ('DCA'). And he says in October 2004 he paid the DCA £3,030 to pay off the debt in full and final settlement.

Our adjudicator thought that Mr D did still owe Capital One £1,008.81 on the credit card. And he thought Capital One was allowed to use the compensation to pay this off. Mr D didn't agree. He said that the letters the DCA sent show that he only owed £3,030. And, if he did owe it more, it mis-led him to think that he'd paid the debt off in full. Our adjudicator still thought Capital One's actions were fair. So Mr D 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 Mr D. Mr D hasn't said that he thinks the amount of compensation Capital One has offered is unfair. And he accepted the offer when Capital One made it. So I haven't looked at whether the offer is fair or not. But Mr D doesn't think Capital One can use 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 he owed. I think it was able to do so and I'd like to explain why.

did Mr D still have a debt on his credit card when Capital One offered compensation?

Mr D says that he paid the credit card debt off in October 2004. So he doesn't think he owed anything on the credit card after then, but I don't agree. Capital One has provided a copy of his credit card statement for October 2004. And this shows that he owed £4,048.81 at the beginning of the month. He then made two payments – £10 on 13 October 2004 and £3,030 on 27 October 2004. And there was a balance on the card of £1,008.81 after then. So it's clear that Mr D didn't pay his credit card off in full.

Mr D says that the letters the DCA sent him said that he only owed £3,030 on the credit card. So it mis-led him into thinking he'd paid the debt off. I agree that the letter says that Mr D owed Capital One £3,030. But I can also see that the letter says:

“We refer to your offer to pay a sum in settlement of your liability for your account. We confirm your offer is accepted, provided you pay on time. We have reduced the amount due to the sum you agreed to pay”.

So the letter says that the DCA has reduced the amount due in line with the agreement made. So I think it does explain that Mr D wasn't paying the full amount that he owed on the credit card. And it doesn't say that Capital One had written the remaining debt off.

When he entered into the agreement with the DCA, Mr D agreed to repay *part* of the debt to Capital One and Capital One had agreed to not pursue him for the rest of the debt. But the remaining debt didn't get written off and still existed.

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

Mr D says that Capital One had sold the debt to the DCA. So, even if there was still a debt, he didn't owe Capital One this money. But I don't agree. The credit card statement shows that the debt was still on the credit card. If Capital One had sold the debt, it wouldn't appear on the credit card anymore. Also, the letters the DCA sent to Mr D say that the money was due to Capital One. So I think that the DCA was acting on behalf of Capital One and Mr D owed Capital One the debt on the card.

In compensating Mr D, Capital One needs to put him in the position he'd be in if he hadn't taken out PPI. As I said, after Mr D paid Capital One £3,030 in October 2004, he still owed it £1,008.81. And part of that debt was for PPI. Had he not taken out PPI, he wouldn't have owed Capital One as much money in October 2004. And, in paying off the outstanding debt, I think Capital One has returned Mr D to in the position he'd be in if he hadn't taken out PPI.

Ultimately Capital One owed Mr D compensation for mis-selling him PPI on a credit card and Mr D 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 Mr D's account. So if Capital One paid all the compensation to Mr D directly, he'd be getting a refund of PPI premiums that he hadn't actually paid. And this doesn't seem fair to me.

Given that Capital One owed more in compensation than Mr D owed on the card, it needs to pay the remainder to him directly.

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 he still owed on the credit card.

Capital One (Europe) plc owed more compensation for mis-selling the PPI than Mr D owed on the credit card. So it needs to pay the difference to Mr D directly. 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 Mr D to accept or reject my decision before 11 August 2016.

Guy Mitchell
ombudsman