Financial Ombudsman Service

complaint

Mr B has complained that Capital One (Europe) plc mis-sold him a payment protection insurance (PPI) policy.

background

In 2004 Mr B took out a credit card with Capital One. When he called to activate his credit card he was sold a PPI policy.

Initially Capital One didn't uphold the complaint so Mr B brought his case to this service. The adjudicator thought Capital One had mis-sold the PPI policy so upheld Mr B's case and asked that Capital One pay compensation. Capital One agreed with the adjudicator's opinion and told us it would like to make Mr B a full offer in line with our guidelines.

Mr B was told Capital One would write to him setting out the specific amounts he would be refunded under this offer. Unfortunately there were delays and Mr B chased both Capital One and this service several times. But in mid-2014 he was told that Capital One had worked out his offer to be a total of £3,531.36. This letter also told Mr B that the refund would be used to reduce the outstanding balance on his credit card.

Mr B has debt with other lenders – some of which has involved court action to secure a charging order against his property. Because of this Mr B thinks the refund from Capital One should be paid to him directly so he can use it to reduce some of his other debts.

The adjudicator looked into the debts Mr B held with other lenders but didn't think the other debts were so pressing they would take priority over Capital One's debt. So they thought Capital One had acted fairly in using Mr B's refund to reduce the amount he owed it on his credit card account.

Mr B disagreed with the adjudicator's opinion so the case has been passed to me.

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 already offered to settle this complaint so I'm not going to look at how it sold the PPI. Instead I'm going to look at whether its offer is fair.

I think Capital One has acted fairly in the circumstances and I'd like to explain why.

Normally if we find that PPI has been mis-sold alongside a credit card we tell the business to refund the PPI premiums and the interest charged on those premiums. If it finds the consumer paid more than they would've paid to clear their credit card without PPI, it would also need to pay 8% simple interest per year on the extra they paid for the time the consumer has been out of pocket. This puts the consumer into the position they'd be in now if they'd taken the card without PPI.

Looking at how Capital One has worked out Mr B's offer I can see it has followed the above approach. It has refunded the premiums Mr B paid towards the policy (£2,199.47) the interest he was charged on those premiums (£829.28) plus an amount at 8% simple interest for the time Mr B has been out of pocket (£628.25).

Mr B is unhappy with how Capital One has used his PPI refund. He feels the money should've been paid to him directly to help with his debts with other lenders rather than being used to reducing his outstanding Capital One credit card debt.

We would normally say that a business is allowed to use the money it owes a consumer to reduce outstanding arrears. Put simply Capital One owes Mr B £3,531.36 but Mr B owes Capital One more than this. So it has used the PPI compensation to reduce what Mr B owes.

I understand that Mr B has debts with other lenders and some of these have led to court action. But I've looked at these debts and I don't think there's any reason for these debts to be paid before Capital One's – for example I can't see Mr B's home is at immediate threat. So it wouldn't be fair for me to tell Capital One to pay Mr B this money directly so that other lenders can reduce their debts instead of Capital One.

Capital One has agreed that Mr B made quite a few phone calls to it chasing for information around his offer. So it has offered Mr B £15.00 to go towards these costs. I think this amount is fair.

my final decision

For the reasons set out above, I think Capital One (Europe) plc has acted fairly in the circumstances. I understand the redress has already been paid to Mr B's credit card account so Capital One (Europe) plc should now send Mr B the £15 for call costs as soon as possible.

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

Lucy Wilson
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