

complaint

Mr M's complaint is about a payment protection insurance (PPI) policy taken out with a credit card. Capital One (Europe) plc (Capital One) used the compensation it offered to reduce the debt Mr M owes them. But Mr M wants Capital One to pay the compensation directly to him.

background

Mr M complained to Capital One about the sale of a PPI policy associated with his credit card. Mr M defaulted on the credit card payments in 2004.

Capital One wrote to Mr M in September 2012 and said it was willing to settle his complaint. Capital One said in the offer that it would pay the compensation firstly to any defaulted balance on the credit card balance, then send a cheque for any amount that was left to Mr M.

Mr M signed the acceptance of offer form and returned this to Capital One. Capital One used the compensation to set off against the debt on the credit card.

Mr M said he had settled the debt on the credit card and the account was closed. So he didn't owe Capital One anything and the compensation should be paid directly to him.

Our adjudicator said what Capital One had done with the compensation was fair and reasonable.

Mr M disagreed with the view of the adjudicator and has asked an ombudsman to consider the complaint. Mr M is represented by a third party.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Capital One has agreed to settle Mr M's complaints about the mis-sale of the policy on his credit card ending 5057. So I will not address the issue of how the PPI came to be sold to Mr M. I am only looking at how Capital One has paid to Mr M the compensation for the PPI charged to this credit card account.

I have decided not to uphold Mr M's complaint.

I have looked at the offer made by Capital One which was for a total of £64.60. This was made up of PPI premiums charged to the card of £50.80 and interest charged on those premiums of £13.80. As Mr M would not have been in credit on his card account if it was reconstructed without the PPI, no further compensation was due to Mr M for being out of pocket.

Mr M had defaulted on his credit card payments in 2004 and there was a debt on the credit card account. A third party debt recovery firm obtained a partial settlement of the debt for Capital One in 2006. Mr M said when he paid this partial amount to the debt, his account was settled and closed.

I have seen a copy of the letter sent to Mr M by the debt recovery firm. This says that once the payment made by Mr M cleared *"that your account is now settled and closed"*. Capital One says this only related to the part of the debt the recovery agent was pursuing and that there was a further amount owed on the credit card.

I also note the letter from the recovery firm goes on to say *"As the amount you paid to settle your account was less than the full outstanding balance, our client will update your credit file to show your balance as satisfied with a special flag of partial settlement"*. The agent was acting on behalf of Capital One and the debt has never been sold to any third party.

Looking at the whole of this letter it seems to me that Mr M was made aware his credit card balance was to be shown as partially settled. So I am satisfied that Mr M was aware he still owed money to Capital One, although the business had taken a commercial decision not to pursue this debt at the time.

The charges for the PPI were made to Mr M's credit card. The total cost as set out in the offer by Capital One was £64.60. As Mr M had a debt on the card of £103.70, after the partial settlement was made in 2006, it is right that the cost of the PPI, which would have formed part of this debt, should be set against the outstanding amount. Mr M had never paid the £64.60 to Capital One as he owed them more on his card when he defaulted than the cost of the PPI.

Capital One can set off the compensation for the PPI against a debt owed on the same account, providing it is fair to do so. As the PPI was taken out with, and charged to, credit card account 5057 there is a direct association between the debt Mr M owes Capital One and the compensation it owes to Mr M. So one can fairly be set off against the other.

I have looked at the offer letter and acceptance form that Mr M signed. On the acceptance form it says, immediately below where Mr M signed:-

"If you would like to accept this offer, please sign and return the enclosed settlement form within 14 days of the date of this letter. Once we receive it we will offset the refund against any over limit amount or defaulted balance on your account. The remainder, if any, will be issued to you by way of a cheque."

I think this made clear how Capital One was intending to use the compensation. Mr M knew he had defaulted on his credit card so should have realised what Capital One was saying.

I have seen nothing to show Mr M had any more pressing debts so I can't say it was unfair for Capital One to use the compensation it owed to Mr M to set against his debt with them for the credit card. After the compensation was paid to the credit card I have seen the statement which shows there was still a debt owed of £39.10.

Following enquiries from this service Capital One has recently confirmed that account ending 5057 had charges of £80.00 applied as a result of the PPI. No information has been provided as to when these charges were made. Capital One has offered to also refund this amount, but still offsetting it against the credit card debt.

As charges were incurred on the credit card account as a result of the PPI it is right these further charges should be refunded. It is also fair that Capital One can set these charges against the debt on the account.

However it seems to me that the debt Mr M owed on his credit card account may be cleared in full by the refund of these charges. Any credit balance that is then on the account should be repaid directly to Mr M by cheque.

my final decision

For the reasons set out I agree that it was fair for Capital One (Europe) plc to use the compensation due to Mr M to set against the debt on his credit card account.

Capital One should now update its calculations to reflect the refund of any charges made to the credit card account as a result of the PPI. Any credit balance then remaining should be repaid to Mr M by cheque.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr M to accept or reject my decision before 13 May 2015.

Christine Fraser
ombudsman