

The complaint

Mrs P has complained about the way Capital One (Europe) Plc (“Capital One”) has used the compensation to settle her complaint about the mis-sale of payment protection insurance (“PPI”) related to a credit card.

What happened

Mrs P took out a credit card with Capital One and also took out PPI alongside it to protect her repayments.

In 2014 Mrs P entered into an individual voluntary agreement (“IVA”) as she wasn’t able to pay all of her debts when they fell due. She was discharged from the IVA in 2016, so she couldn’t be chased by her creditors for the debts she had listed when she entered into the IVA.

Mrs P complained to Capital One that she’d been mis-sold PPI and it made an offer to settle her complaint. It offered compensation of £6881.27. But Capital One said Mrs P still owed it over £10,000 when she was discharged from her IVA. So it used the compensation to reduce the amount of money it said Mrs P still owed.

Mrs P says that she should get paid this PPI compensation paid directly to her. She says, as she’s come out of her IVA, her debts have been written off and she doesn’t owe Capital One anything. Mrs P says the IVA isn’t being accepted and honoured by Capital One.

One of our adjudicators looked at the complaint and thought it was fair for Capital One to use the compensation to reduce Mrs P’s debt. But she disagrees, so the case has been passed to me for a final decision.

What I’ve decided – and why

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 agreed to uphold the complaint and work out compensation as I would expect. So I don’t need to look at how PPI came to be sold to Mrs P. But I do need to consider whether Capital One’s offer is fair.

I think the offer is fair and I’d like to explain why.

I’d expect that when a business has mis-sold PPI, it puts things right by putting the consumer in the position they would’ve been in now if they hadn’t taken out PPI. I’d expect a business to remove from the credit card account the charges for PPI, any interest paid on the charges and any further charges caused by the PPI.

A business can also set against the costs of the PPI any claims paid, as happened in Mrs P's case, as no claims would have been paid if there was no PPI on the account. And as we are putting Mrs P back in the position she would have been without the PPI it is fair to remove the amount of any claims paid out.

If, when the costs of the PPI are taken off the credit card balance, someone paid more than they needed to clear their balance I'd expect a business to pay interest on the extra amount for the time they are out of pocket at the rate of 8% a year simple interest.

Capital One has worked out that, if Mrs P didn't owe anything for the debt on her credit card, she'd get back £6,881.27 in compensation. This is made up of £4,080.65 for the PPI premiums that were added to the account and £1,044.32 in interest caused by those premiums being on the account. Claims totalling £2,856.54 have been removed from these PPI costs.

In addition, at times when Mrs P cleared her balance, as I indicated above, she should get 8% simple interest on amounts she was out of pocket. Capital One has worked out this compensatory interest as £1,756.39 after income tax has been deducted and paid to HM Revenue and Customs.

Mrs P isn't saying the amount offered of £6,881.27 is wrong, so I now need to consider whether Capital One can use the compensation to reduce the debt it says she still owes.

We usually say a business can use a consumer's compensation to reduce their debts if the debt is on the account that PPI was sold alongside. Here I can see that the PPI was sold with the same account that went into arrears, so I think Capital One can use the compensation to reduce the debt.

Mrs P has said that she settled her debt with Capital One as part of her IVA in 2016 and it accepted a partial payment in full and final settlement. I've seen from the IVA settlement account that Capital One was paid just under £2,000 during Mrs P's IVA, but this still left a balance outstanding. So Mrs P didn't fully paid off her debt during her IVA.

When Mrs P entered into an IVA, the debts she owed weren't cancelled. And they weren't cancelled when she was discharged in 2016 – but by law she couldn't be chased for the debts once the IVA had ended. The debt she has with Capital One still exists and some of it is for PPI premiums (and interest) that Mrs P never paid. So I think it's fair for Capital One to use the compensation to reduce her debt, otherwise she'd be getting a refund of PPI premiums (and interest) she didn't actually pay in the first place.

I've also thought about when Mrs P had PPI – it was before she entered into the IVA. But at that point she shouldn't have had PPI on her card, so she would've owed Capital One something, but it would've been less.

Capital One has to put Mrs P in the position she would've been in if she'd never had the PPI on her account. She owed over £11,000 in total when she entered into her IVA, so the PPI cost was only responsible for part of her debt on the credit card. I think it's fair to assume Mrs P would've still entered her IVA if she hadn't had the PPI. So I think she would've entered into the IVA with a smaller debt and, at the end, Capital One wouldn't have been able to chase her for this smaller debt.

This is the position Capital One has put Mrs P in now by removing the PPI. And after that is done the debt remaining unpaid is still just over £3,000.

Mrs P says she feels the IVA is not being accepted and honoured by Capital One. Once the IVA was completed Capital One could not proactively take legal action against Mrs P for any money that remained unpaid on completion of the IVA. And it has complied with that.

Capital One hasn't actively taken any action against Mrs P. It has used the PPI compensation it owed her to set off against a debt that is dormant but that she owed the business. Both debts relate to the same account and part of the debt Mrs P owed to Capital One was for PPI she never actually paid. So it is fair to set one debt against the other in these circumstances.

Taking all these factors into account I think what Capital One has done with the compensation is fair.

My final decision

For the reasons set out above I think Capital One (Europe) Plc's offer is fair and what it has done with the compensation is also fair so I don't direct it to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 10 June 2020.

Chris Fraser
Ombudsman