

## **The complaint**

Mr L has complained about the way Capital One (Europe) Plc (Capital One) has used the compensation to settle his complaint about the mis-sale of payment protection insurance (PPI) related to a credit card.

## **What happened**

Mr L took out a credit card with Capital One and also took out PPI alongside it to protect his repayments.

Mr L complained to Capital One that he'd been mis-sold the PPI. Capital One agreed to uphold his complaint and made an offer of compensation to settle it. But Capital One said Mr L still owed it for a debt on the credit card. So it was using the compensation to reduce the amount of money that was still owed on the card account debt.

Mr L says that he should get paid this PPI compensation directly as the credit card debt is no longer in effect. Capital One didn't agree and Mr L brought his complaint to this service.

One of our adjudicators looked at the complaint and thought it was fair for Capital One to use the compensation to reduce the debt that hadn't been cleared on the credit card account.

Mr L didn't agree and asked for the case has been passed to an ombudsman.

## **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 for the mis-sale. So in this decision I am not looking at how PPI came to be sold to Mr L. But I do need to consider whether Capital One's compensation offer and how it has used the compensation is fair.

When a business has mis-sold PPI, it must put things right by putting the consumer as far as possible in the position they would've been in if they hadn't taken out PPI. So I'd expect a business to remove from the credit card account the PPI premiums, any card rate interest paid on those premiums and any further charges caused by the PPI.

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 if Mr L didn't owe anything for the debt on his credit card, he'd get back £754.98 in compensation. This is made up of £362.04 for the PPI premiums that were added to the account and £305.69 in interest caused by those premiums being on the account.

In addition, as I indicated above, Capital One has worked out Mr L should get 8% simple interest on amounts he was out of pocket. Capital One has worked out this compensatory interest as £109.06 before income tax has been deducted and paid to HM Revenue and Customs.

Mr L hasn't said he feels the total amount offered of £754.98 is wrong. And having looked at the calculations I also think what Capital One has worked out is fair. So, I now need to consider whether Capital One can use the compensation to reduce the debt it says Mr L 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. This is what is called a closely associated debt. Here I can see that the PPI was associated with the same credit card account that went into arrears and on which the debt exists. So I think Capital One can use the compensation to reduce the debt.

Mr L has said that this debt goes back to 2011 when he defaulted on payments to his credit card. He has indicated that a County Court Judgement was obtained for the debt, but Capital One say that was not the case. There has been no evidence provided to indicate that any legal action was taken in connection with this debt. But in any event the records of the account indicate that the amount outstanding in 2011 was £952.54 and nothing was paid off that debt.

Because the debt is more than six years old and Capital One has not chased for it, the law doesn't allow any legal action to now be taken to recover the debt. And Capital One has not proactively taken any action to obtain payment of the debt Mr L owed. But that debt with Capital One still exists and some of it is for PPI premiums (and interest) that Mr L never paid. So I think it's fair for Capital One to use the compensation to reduce the debt, otherwise Mr L would be getting a refund of PPI premiums (and interest) he didn't actually pay in the first place.

Capital One has to put Mr L as far as possible in the position he would've been in if he'd never had the PPI on his account. He owed over £950.00 in total when he defaulted on payments to his account, and the PPI cost was responsible for part of his debt on the credit card. So Capital One has put Mr L in the position he would've been in now by removing the PPI from the debt. As if Mr L hadn't had PPI his debt would have been less.

Mr L says he thinks if Capital One uses the money against the credit card debt it is not being punished for its misdeeds. This service is not here to punish businesses, but to resolve individual complaints in a fair way for the parties. The Financial Conduct Authority is the regulator of financial businesses and is responsible for dealing with issues about any misconduct by a business.

Capital One hasn't actively taken any action against Mr L to seek repayment of the debt. It has used the PPI compensation it owed him to set off against a debt that is dormant but that he owed the business. Both debts relate to the same account and part of the debt Mr L owed to Capital One was for PPI costs he borrowed by adding the premiums to his account but never actually paid back. 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 of compensation to Mr L and what it has done with the compensation is fair, so I don't direct it to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 19 June 2020.

Chris Fraser  
**Ombudsman**