

The complaint

Mr P complains that Capital One (Europe) plc has used the compensation due to him from a payment protection insurance (PPI) policy to reduce his outstanding debt with it.

Mr P took out a credit card with Capital One in 2004 and took out the PPI at the same time. The policy was cancelled in 2005. Mr P complained the PPI was mis-sold to him and in its final response in 2018, Capital One made an offer for the high level of unfair commission and profit it had received on the premium Mr P was charged for the policy. As Mr P wasn't told about the rate at which the commission was charged, it led to an 'unfair relationship'. Capital One had to pay back to Mr P any commission or profit share that it had received that was more than 50% of the premium.

This worked out to be £11.83. This included the excess commission part of the PPI premium itself and the excess associated interest charged because of it. But Capital One has used the compensation to reduce Mr P's outstanding debt on the credit card.

Mr P says he was previously in an individual voluntary arrangement ("IVA") but it had been completed. He said he had a letter from the IVA practitioner to say they no longer had any interest.

One of our adjudicators looked at this and concluded that Capital One had acted fairly.

Mr P remained unhappy and the complaint remained unresolved. So, the case has been passed to me to make 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.

In this decision I've only considered the complaint about the commission and profit share Capital One got because of the PPI. I am unable to consider how the policy was sold as I'm satisfied the complaint wasn't brought in time.

Mr P is complaining about two points – one being the fact that he's not received all the money he paid for PPI refunded and the other being able the fact Capital One has used his compensation to reduce his outstanding debt. I'll discuss each point in turn.

Level of redress received

In 2017, following a Supreme Court judgment, the Financial Conduct Authority (FCA), issued some new rules about how businesses should deal with complaints about PPI.

The FCA said that if a business got a high level of commission and profit share from the PPI policy – more than 50% of the PPI premium – and it didn't tell the consumer, then that could create an unfair relationship between the parties. So, to put that right, the FCA said that

businesses should pay back the amount of commission and profit share that was *more* than 50% of the PPI premium.

Capital One said that the level of commission and profit share it received did create an unfair relationship. So, to put things right it offered to refund the extra Mr P paid each month because the commission and profit share it received was more than 50% of the cost of PPI premium. It also included 8% per year simple interest to compensate Mr P for any time he was out of pocket.

Mr P says there have been other court cases in relation to non-disclosure of commission where consumers have received everything back. So, he thinks Capital One should refund all of the money paid for the PPI.

One of the things I need to take into account when deciding what is fair and reasonable in all the circumstances of Mr P's complaint is the law. But I also need to take into account relevant regulator's rules, guidance and standards; codes of practice; and (where appropriate) what I consider to be good industry practice at the relevant time.

In this case Capital One has made Mr P an offer of compensation in relation to the level of commission it received that is in-line with the methods set out by the FCA. But Mr P wants Capital One to do something different.

I have looked at the particular circumstances of Mr P and his complaint to see if there's anything about him that would mean the business should do something different – if the remedies set out in the FCA's rules don't lead to fair and reasonable redress for Mr P. But there isn't anything about Mr P's complaint or circumstances that suggest the redress paid by Capital One isn't fair or reasonable.

In this case I think Capital One's offer is a fair way to resolve this case.

Can Capital One use Mr P's compensation to pay what he owes?

As explained above, Capital One has used the compensation to offset against money it is owed by Mr P. In doing this, I think Capital One did act fairly. I know Mr P will be disappointed with my decision, so I'd like to explain how I've reached the conclusion that I have.

Mr P considers that as the IVA has been completed and that the IVA practitioner didn't have any interest, then the compensation should be paid to him directly.

When Mr P entered an IVA, the debts he owed weren't legally cancelled or written off. Rather, they were frozen, and this is important to understand. So, the debts didn't cease to exist when the IVA was successfully completed.

Mr P entering an IVA and then successfully completing it, meant by law, he couldn't be chased for the debt. But the debt Mr P has with Capital One does still exist because it hasn't been paid back.

Capital One is still out of pocket for this money - it isn't pursuing Mr P for the debt. But it has accepted it owes Mr P money for the PPI compensation, so it owes him a debt. What it is doing is 'setting off' the PPI compensation against the debt Mr P owed for his spending on the credit card account that still exists.

There is in law, what is called the *equitable right to set off*, which allows people to 'set off' *closely connected* debts. This means one person (A) can deduct from a debt they owe another person (B), money which that person (B) owes to them.

For this right of set-off to apply, I must be satisfied that there is a close connection between the PPI compensation and the outstanding debt. I must also consider whether it would be fair for Capital One to set-off in this way. Both tests must be satisfied for me to find that Capital One has an equitable right to set-off the PPI compensation against Mr P's outstanding debt on his credit card account.

The PPI sold to Mr P was directly connected to his credit card. By using the right of set-off I have outlined above, I'm satisfied the PPI compensation and the credit card debt are closely connected. They are both for the same account Mr P had with Capital One.

And despite Mr P completing his IVA, both parties owe each other money relating to the same account. So, it seems fair that one amount should be set against the other.

I empathise with Mr P's position. Clearly, he thought he didn't owe anything after completing the IVA. But unfortunately, this isn't the case. And as I have said above, Capital One can't legally pursue him for the debt.

Had the IVA practitioner had an interest then Mr P's compensation would have been paid to the practitioner. And if they didn't hold an interest then Capital One could have used it to reduce the debt as they have done. Mr P would only receive anything, if there were some left over. Which in Mr P's case there wasn't.

My final decision

For the reasons set out above, I don't uphold Mr P's complaint about the commission. And I think it was fair for Capital One (Europe) plc to use the compensation it owed to Mr P to reduce his outstanding debt.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 30 March 2021.

Claire Marchant-Williams
Ombudsman