

complaint

Mr P's complaint is that Capital One (Europe) plc has used compensation from a mis-sold payment protection insurance (PPI) policy to reduce a debt it says he owes.

background

Mr P opened a credit card account with Capital One in October 2004. At the same time he was sold a PPI policy to run alongside the account. The PPI premiums varied according to the balance on the credit card account. And the premiums were added to the balance in the same way as purchases made on the card.

The PPI policy was cancelled in June 2006.

In February 2007 Mr P got into financial difficulties and he entered into an individual voluntary arrangement (IVA) with his creditors. Mr P successfully completed the IVA in April 2010.

In 2012 Mr P complained to Capital One, via a third party, about the way the PPI policy had been sold to him.

In September 2012 Capital One wrote to the third party. In its letter Capital One said:

"By entering into an IVA, your client offered a reduced sum in respect of their outstanding debt to us, which was accepted in full and final settlement of all sums due under our contractual relationship with your client."

Capital One went on to say that Mr P should've disclosed his claim that the PPI was mis-sold at the time he entered the IVA. So Capital One said it wouldn't look into his complaint further.

Mr P asked us to step in. And in November 2013 Capital One agreed to uphold Mr P's complaint. Capital One's offer was for £647.30. This was made up of £565.58 PPI premiums, £39.19 interest charged on those premiums and a further £53.16 interest calculated at 8% simple per year. This 8% interest was compensation for the time Mr P had been out of pocket. Capital One deducted £10.63 income tax from the 8% interest as it has to under HM Revenue and Customs guidelines.

Capital One said it'd use the compensation to reduce the arrears on Mr P's account.

Mr P wasn't happy with Capital One's offer. Mr P said he'd completed the IVA so he didn't owe Capital One anything on the credit card account. Mr P also said he didn't think that Capital One had calculated the offer correctly. And Mr P said that when he first complained to Capital One it told him he didn't have PPI attached to the account.

In August 2014 Capital One sent this service an email saying, *"Upon investigation, we have found that the consumer should receive a cheque for the settlement amount that was previously used to offset their account. Our settlement department will forward the cheque to Mr P in due course."*

Later that month Capital One sent us a copy of the calculations it'd used to work out the compensation. Capital One again said Mr P could cash the cheque when it arrived.

My understanding is that Mr P was never sent a cheque for the compensation. Instead Capital One used the compensation to reduce the arrears on the credit card account.

In March 2016 an adjudicator from this service wrote to Mr P. In her letter the adjudicator said the compensation had been worked out how we'd expect it to be. And the adjudicator said Capital One acted fairly when it used the compensation to reduce the credit card account arrears.

Mr P asked for an ombudsman to review the complaint. Mr P said he completed the IVA and therefore cleared the credit card balance. So Mr P said the compensation should be paid directly to him.

In June 2016 I issued my provisional findings on Mr P's complaint and invited both parties to comment and give me any additional evidence they wanted me to take into account. A copy of my provisional decision is attached and forms part of this final decision.

My provisional findings were that I was intending to find that Capital One acted fairly when it used the compensation to reduce the arrears on the credit card. But I thought Capital One had handled the complaint poorly and I thought it should pay Mr P £150 compensation for this. My main reasons were:

- Even though Mr P had completed the IVA, he had only paid back part of what he owed Capital One.
- Although Capital One couldn't pursue Mr P for the rest of the debt, this didn't mean it didn't exist anymore.
- If Capital One did pay the compensation to Mr P then he'd be getting a refund of PPI premiums which he hadn't actually paid. And I didn't think that'd be fair.
- I thought Capital One had dealt with the complaint poorly. Particularly when it incorrectly told us that it would pay Mr P the compensation directly.

Both parties have now told us they received my provisional findings.

my findings

I've considered again all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We've set out our general approach to complaints about the sale of PPI on our website and I've taken this into account in deciding Mr P's case.

Capital One hasn't added anything further following my provisional findings.

Mr P told us he didn't agree with my provisional findings. Mr P said he completed the IVA so he should receive all the compensation.

I appreciate Mr P doesn't agree with my provisional findings. But he hasn't given us any *new* evidence or comments. Because of this I see no reason to depart from the findings I set out in my provisional decision in June 2016.

my final decision

For the reasons set out above, and in my provisional decision, I award Mr P £150 for the distress and inconvenience he's experienced due to Capital One (Europe) plc's handling of his complaint. This should be paid to Mr P direct.

I think Capital One (Europe) plc acted fairly when it used the compensation for the mis-sold PPI to reduce the arrears on Mr P's credit card account.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 8 August 2016.

Steve Thomas
ombudsman

copy of my provisional decision

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my provisional 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's calculations

When a business has mis-sold a PPI policy I'd expect it to put the consumer in the position they'd be in if the policy hadn't been sold.

In this case I'd expect Capital One to refund all the PPI premiums that it charged to Mr P's account. I'd also expect it to refund any interest added because of the PPI. And I'd look for it to pay 8% simple interest per year to compensate Mr P for any time he's been out of pocket.

Looking at Mr P's account I can see he was charged a PPI premium each month between November 2004 and June 2006. I can also see that Capital One has worked out the interest that was added to the account because of the PPI. And it's included 8% simple interest per year where Mr P paid more than he should've to clear his balance because of the PPI.

So I think Capital One has worked out the compensation in the way I'd expect it to.

can Capital One use the compensation to reduce Mr P's arrears?

I'd usually say a business can use a consumer's compensation to reduce their arrears if the debt is on the account that PPI was sold alongside. In this case I can see that the PPI was sold with the account in arrears. So normally I'd say Capital One can use the compensation to reduce the debt.

But Mr P says there is no debt because he completed the IVA. I've thought about this point.

Mr P has said he settled his debt with Capital One as part of the IVA which he completed in May 2010. And Mr P says Capital One accepted a partial payment in full and final settlement.

I've looked at the balance on Mr P's account and I can see that it remained at £3,881.07 from November 2006 until June 2010. This suggests that no payments were made to the account during this time.

In June 2010 the balance reduced by £505.50 to £3,375.57. I think the £505.50 represented the repayment from the IVA which ended the month before. So I can see Mr P didn't fully pay off the account during the IVA.

The balance then remained at £3,375.57 until March 2014 when the £647.30 compensation was used to reduce it to £2,728.27.

When Mr P entered into an IVA, the debts he owed weren't cancelled. And they weren't cancelled when he completed the IVA in 2010. But he couldn't be chased for the debts. The debt he has with Capital One still exists and some of it relates to PPI premiums (and interest) that Mr P never paid.

So I think it's fair for Capital One to use the compensation to reduce the balance, otherwise he'd be getting a refund of PPI premiums (and interest) he didn't actually pay in the first place. And this wouldn't be fair.

I've also thought about when Mr P was sold the PPI. It was before he entered into the IVA. So at the point he entered the IVA he shouldn't ever have had PPI on his card. But if the PPI hadn't been sold then I think Mr P would've still owed Capital One something, but it would've been less.

As I've already said, Capital One has to put Mr P in the position he would've been in if he wasn't sold PPI. It looks like Mr P owed £3,881.07 on the credit card account when he entered into his IVA, and PPI was only responsible for part of this debt. I think it's fair to think Mr P would've still entered an IVA if he hadn't been sold PPI. So I think he would've entered into the IVA with a smaller debt and, at the end, Capital One wouldn't have been able to chase this smaller debt. This is the position Capital One has now put Mr P in, so I think what it's done is fair.

how Capital One dealt with Mr P's complaint

When Mr P first complained to Capital One via a third party, my understanding is that it told the third party that Mr P didn't have PPI on his account. This despite Capital One holding full account details in its records. I think it must've been upsetting for Mr P to be told this when he knew he was sold PPI.

In August 2014 Capital One told this service that it'd pay Mr P the compensation directly. But it's since told us that it won't do this as it's already used the compensation to reduce the arrears on the account. Again I think this must've caused Mr P to experience some confusion, inconvenience and upset.

Because of these errors, I think Capital One should pay Mr P £150 directly to compensate him for the trouble and upset it caused. It shouldn't use any of this £150 to reduce arrears.

my provisional decision

For the reasons set out above, but subject to both parties' responses to this provisional decision, I'm intending to award Mr P £150 for the distress and inconvenience he's experienced due to Capital One's handling of his complaint.

I also intend to say Capital One acted fairly when it used the compensation to reduce the arrears on Mr P's credit card account.

Steve Thomas
ombudsman