

complaint

Miss K's complaint is about a payment protection insurance (PPI) policy taken out alongside a credit card with Capital One (Europe) plc (Capital One).

background

Miss K took out a credit card with Capital One in 2002 and at the same time applied for a PPI policy. The account and policy ran until 2008 when Miss K got into some financial difficulties. The PPI ended in June 2008 and Miss K entered into an individual voluntary arrangement (IVA) in September 2008.

In 2018 Miss K complained to Capital One that the PPI was mis-sold. Capital One didn't agree that was the case, but it did say she had paid some unfair commission as part of the premiums she had paid for the PPI and it offered compensation to refund this. The IVA had ended and the Insolvency Practitioner said they had no interest in the compensation. So Capital One set this compensation against the debt still remaining on the credit card that had never been settled.

Miss K wasn't happy with what Capital One said and did so brought her complaint to this service.

Our adjudicator investigated and recommended upholding the complaint that the PPI was mis-sold. Capital One eventually agreed and offered to pay compensation that would refund all the PPI costs less the amount it had already paid for the excess commission part of the cost. Miss K agreed this was acceptable.

But Miss K heard nothing from Capital One for several months and had not received any compensation. So she came back to this service.

Capital One initially said it had sent a cheque to Miss K in August 2018 for the remaining compensation. But then it clarified that it hadn't sent a cheque, but had sent a letter about the additional compensation due for the mis-sale. Miss K had never received this letter as it had been sent to an old address.

Capital One said it had used this additional compensation to set against the debt on the credit card, in the same way it had done with the original unfair commission compensation.

Miss K was unhappy with this. Our adjudicator looked at what Capital One had done and said how it had used the compensation was fair as there was still a debt on the credit card account. Even after all the compensation was set off against the debt, a small amount remained unpaid.

Miss K was still unhappy and asked for an ombudsman to consider her complaint.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As Capital One has agreed to uphold Miss K's complaint that the PPI was mis-sold I am not considering further the issues about how the policy came to be sold. In this decision I am

looking at the total compensation Capital One has worked out is due to be paid to Miss K and how it has made the payment.

Miss K got into financial difficulties in 2008 and the PPI was cancelled, the last charge for the PPI showing as added to the card account on 19 June 2008. In July 2008 the account was suspended.

In September 2008 Miss K entered into an IVA. The balance owing on the credit card at this point was £7,423.26. The IVA resulted in a proportion of the debt being paid to Capital One. Once the IVA had closed there was still an amount of £5,685.82 owing on the card account. Capital One could not chase Miss K for payment of this as a result of the IVA but the amount was unpaid and remained dormant on the account.

When Miss K complained about the mis-sale of the PPI, Capital One said the PPI wasn't mis-sold but offered compensation for some unfair commission charged as part of the PPI premiums. Capital One said in its offer letter of 2 February 2018 that it would pay the unfair commission compensation to the credit card debt that remained on the account. The payment of the commission compensation was made in March 2018.

Miss K brought her complaint about the mis-sale to this service and we recommended the complaint should be upheld. So Capital One agreed to pay compensation for the full costs of the PPI, not just the commission part of the PPI, with some compensatory interest.

Capital One then sent a letter to Miss K dated 1 August 2018. This letter was sent to Miss K's old address as it seems by mistake she had entered this on the online system of Capital One when chasing the compensation for the full mis-sale.

This August letter set out that the excess commission and compensatory interest of £1,916.99 had already been paid. And it went on to say that an additional amount was due to Miss K to refund all the PPI costs and compensatory interest on the total of the costs she had been out of pocket. It explained taking into account what had already been paid for the unfair commission, a further £2,964.26 was still due to Miss K to refund the total compensation for the mis-sale. It went on to say: *"The full amount of £2,964.26 will be sent via cheque. This will be issued separately and should arrive within 10 days."*

Miss K never received this letter so wasn't aware of the amount or what Capital One had said about the payment. No cheque was sent. Capital One have since explained this additional compensation of £2,964.26 was actually used against the debt on the credit card account, in exactly the same way the original amount for the unfair commission compensation had been used. So no payment was made, or due, directly to Miss K and the part of the letter sent in August 2018 saying a cheque would be paid was an error.

Miss K never received this letter until a copy was provided after she came back to this service in January 2019, having heard nothing from Capital One about the additional compensation for the mis-sale.

I think what Capital One actually did in setting the total compensation against the debt on the credit card was fair.

I know Miss K is unhappy with this as she feels at least some of the compensation should have been paid to her. From what she has said it seems she felt that the amount of the compensation was significant and if the PPI premiums had never been paid she would only

have a debt of what was left owing after the set-off, that is £804.57. So she thought this amount should be deducted from the PPI compensation and she should be paid the rest.

In fact the amount Miss K still owed when her IVA ended was £5,685.82. Part of this outstanding debt included the costs of the PPI. When working out compensation for mis-sold PPI, businesses include the PPI costs in the balance and treat it as the last thing paid off. What this means is that the consumer isn't deemed out of pocket but gets card rate interest on the total cost of the PPI until it is cleared. This is rather than simple interest which works out as less interest for the consumer.

By setting the compensation due for the mis-sold PPI against the debt on the account, this in effect stripped out the PPI costs from the balance. This meant that in total the debt still owing after the IVA ended of £5,685.82 was reduced by the total compensation for the PPI. This compensation was applied in two amounts of £1,916.99 and £2,964.26, leaving an amount of debt on the account, still unpaid, of £804.57.

If Capital One used this £804.57 figure and took it off the total compensation due for the PPI, as Miss K has suggested, it would mean that Miss K was getting paid the PPI costs, less the amount owed for her own spending on the credit card. But she had never actually paid the PPI costs that were added to the card balance as they were still owed as part of the debt on the account. And Miss K shouldn't be paid back something she has never actually paid out.

So I think what Capital One has done with the compensation is fair. It has set all the PPI costs against the account balance which removes the PPI and the amount remaining of £804.57 is for what Miss K spent on the card without any PPI being included.

I note Miss K's points that in its letter of August 2018 Capital One said it was paying the compensation due by cheque and made no reference to setting it off as it had done in its February 2018 letter for the earlier compensation. Capital One agrees it made a mistake in saying this in August 2018.

Although Capital One did make an error in saying it would pay a cheque, I don't think Miss K suffered any unnecessary upset as a result because she was unaware of what Capital One had said. She never received this letter when it was sent and wasn't provided with a copy of it until after it had been explained to her that the second amount of compensation was also being used as set off for her debt.

I know Miss K wasn't fully made aware of the exact amount of compensation that was being set against her account debt until some months after it was done and also the letter of August 2018 was not accurate about how the payment of compensation was to be made. But overall this was in part due to Miss K's mistake when she filled in the online form relating to her complaint about the compensation. And I don't think she has been caused any additional upset by expecting to receive the compensation direct, as stated in the letter, as she never received that letter.

So I think what Capital One has worked out as the compensation due to Miss K is correct and how it has used it to set against the debt owing on the credit card account is fair.

my final decision

For the reasons I've set out above I'm satisfied that the compensation paid by Capital One (Europe) plc to settle the complaint of Miss K about the mis-sold PPI, and how it has used that compensation, is fair. So I'm not going to tell it to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 15 June 2019.

Christine Fraser
ombudsman