

complaint

Mrs A has complained about the way Capital One (Europe) plc ("Capital One") has used the compensation it agreed to pay her after she complained about the mis-sale of payment protection insurance ("PPI").

background

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

In 2005 Mrs A entered into an individual voluntary arrangement ("IVA") as she wasn't able to pay all of her debts when they fell due. Her IVA completed in 2010, so at that point she couldn't be chased by her creditors for the debts she listed when she entered into the IVA.

Mrs A complained to Capital One that she'd been mis-sold PPI, but it didn't agree so she brought her complaint to this service. One of our adjudicators thought PPI had been mis-sold, so Capital One made an offer to settle Mrs A's complaint. It offered compensation of around £1,000. But Capital One said Mrs A still owed it around £2,000 when she was discharged from her IVA. So it offset the compensation against the amount of money it said Mrs A still owed.

Mrs A, through her representatives, said that she should get paid this money directly. She said, as she's come out of her IVA, her debts had been written off and she didn't owe Capital One anything. So Capital One wasn't able to offset the compensation.

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

Since then Mrs A's representatives have argued that the compensation should become an asset of the IVA, so it needs to pay the compensation in the way her IVA supervisor says it should.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I agree with our adjudicator's view.

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 premiums charged for PPI, any interest paid on the premiums, and any further charges caused by the PPI.

If, when this is taken off, someone paid back to their account more than they needed to, 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.

Capital One has worked out that, if Mrs A didn't owe anything, she'd get back around £1,000 for the costs of PPI. And she isn't saying the amount offered is wrong, so I need to consider whether Capital One can use it to reduce the debt it says she still owes.

We usually say a business can use a consumer's PPI compensation to reduce the same debt the PPI was sold with. Here I can see that the PPI was sold with the credit card account in arrears. So, on the face of it, I think it's fair for Capital One to use the credit card PPI compensation it owes Mrs A to reduce the debt she owes Capital One on the same credit card.

Mrs A has said that she settled her debt with Capital One as part of her IVA in 2010, so it accepted a partial payment in full and final settlement. But once Mrs A paid what was due under her IVA, there was still a balance left outstanding. Mrs A didn't fully pay off her debts during her IVA.

When Mrs A entered into an IVA, her debts weren't cancelled. And they weren't cancelled when she was discharged in 2010 – but by law she couldn't be chased to pay the debts. This was due to the protection given by the IVA. But I don't think it's fair for Mrs A to both use that protection to shield her from her debt to Capital One and at the same time assert her right to compensation.

Capital One has to put Mrs A in the position she'd be in now if she didn't have PPI. If Mrs A didn't have PPI, she would've been getting charged less on her credit card. So her credit card debt would've been smaller when she went into her IVA, and it would be smaller now. So by using the PPI refund to reduce her credit card debt, Capital One is putting her in the position she would've been in without the policy. I think that's fair.

And some of the compensation is for PPI premiums (and interest) that Mrs A 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.

Mrs A's representatives have asked me to take into account a court judgment. They say the judgment makes it clear that PPI compensation becomes an asset in an IVA, so Capital One should pay the compensation to the IVA supervisor to decide what happens with it. They also say that, if Capital One offset the compensation against the debt, it would mean Capital One was paid too much in the IVA.

I've read the judgment and I've taken it into account. But I don't think the judgment helps Mrs A in the way her representatives say it does. That case was between a consumer and their IVA supervisor who argued over who should get a PPI compensation payment. The judge said the debt wasn't extinguished or discharged at the end of an IVA, rather the debtor couldn't be chased for payment. And the judge found, in that case, that the compensation should go to the IVA supervisor to decide what to do with it under the IVA.

But here Mrs A's IVA supervisor has told this service they don't have an interest in any compensation, so they aren't asking for any compensation to be paid to them. And I think Mrs A's complaint is different to that judgment. I'm not looking at what should happen with compensation that needed to be paid, rather I'm considering whether Capital One actually need to pay anything at all. For the reasons set out above, I think it's fair for Capital One to use the compensation to reduce the outstanding debt.

It's possible that this means Capital One was paid more during the IVA than other creditors as Mrs A's representatives say, but I don't think it follows that Mrs A should be paid the compensation directly. That would be a matter for her IVA supervisor to consider and is not part of the disagreement between Capital One and Mrs A.

my final decision

For the reasons set out above I think Capital One (Europe) plc's offer is fair and I don't direct it does anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 26 February 2018.

Mark Hutchings
ombudsman