

## **complaint**

Mr L is complaining that Capital One (Europe) plc has used the compensation it offered for the mis-selling of a payment protection insurance (PPI) policy attached to his credit card, to reduce his outstanding debt.

## **background**

In 2016, following Mr L's complaint through a claims management company (CMC) that he had been mis-sold PPI, Capital One offered him compensation of £547.13 (after tax). And Capital One used the compensation to reduce Mr L's outstanding debt on the credit card account.

Mr L says that he had previously been in an individual voluntary arrangement (IVA). But he had completed his IVA receiving a certificate of completion. He considers that the conclusion of his IVA meant that the creditors (in this case Capital One) had accepted an amount and this was in full and final settlement of the debt.

So Mr L considers that he has no account or debt with Capital One and it should pay him the compensation directly. As it hasn't, he has to pay his CMC fee without receiving any of the compensation. So Mr L feels he has really lost out. He has received no money and has to pay a fee.

Our adjudicator looked at the complaint and thought that what Capital One had done was fair. Mr L remained unhappy and asked for an ombudsman to review the case and make a final decision. Because this matter hasn't been resolved, it's been passed to me.

## **my 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 has agreed it mis-sold the PPI policy to Mr L, so I don't need to look at how it was sold. And Mr L hasn't complained about the amount Capital One has offered in compensation, so I haven't looked at this.

In this decision, I've only looked at whether it was fair for Capital One to use the compensation it's offered to reduce his outstanding debt.

Having done so, I think Capital One has acted fairly. I know this will come as a disappointment to Mr L, so I would like to take this opportunity to explain why.

Mr L considers that as he completed his IVA it meant he has no account or debt with Capital One.

When Mr L entered into an IVA, the debts he owed weren't legally cancelled or written off, they were frozen. And they didn't cease to exist when the IVA was successfully completed.

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

Capital One is still out of pocket for this money. And it isn't pursuing Mr L for the debt. It has accepted it owes Mr L money for the PPI compensation, so it owes him a debt. And it is 'setting off' this debt for the PPI compensation against the debt Mr L owed for his spending on the credit card account which 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 L's outstanding debt on his credit card account.

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

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

But there is another party that is important in this case. And that is Mr L's insolvency practitioner. Mr L's insolvency practitioner explained they would've had an interest in the compensation. But as Capital One has already reduced the debt Mr L owes it, they will not ask Capital One to reverse the payment and pay them directly.

All things considered, and taking into account the insolvency practitioner position, I think it was fair for Capital One to use the compensation to reduce what Mr L owed it.

I empathise with Mr L's position, because I can understand why he thought he didn't owe anything after completing his IVA. But this unfortunately wasn't the case.

I would suggest to Mr L that he shows a copy of this decision to his CMC. I say this because Mr L was never entitled to receive any compensation. This is because of his situation of previously being in an IVA.

His compensation would've been paid to the insolvency practitioner in these circumstances. And if they didn't hold an interest, then Capital One could've used it to reduce the debt as they have done. Mr L would only receive anything, if there was some left over. Which in Mr L's case there wasn't.

I am not sure whether Mr L told his CMC that he was previously in an IVA. So I recommend Mr L discusses this with his CMC if he is struggling to pay the fee the CMC has charged him.

If Mr L can't resolve matters with his CMC he would have to take any issues about this to the Legal Ombudsman. This is because our service cannot look into concerns about CMC's.

I have provided the details of the Legal Ombudsman below.

Legal Ombudsman  
PO Box 6806  
Wolverhampton  
WV1 9WJ  
Tel: 0300 555 0333

**my final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 8 December 2017.

Matthew Horner  
**ombudsman**