

complaint

Mr S 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

Mr S took out a credit card in 1999. At the same time he bought a PPI policy.

In 2003, Mr S fell behind with his payments and owed Capital One around £6,800. In November 2003 Mr S entered an individual voluntary arrangement (IVA). And, in 2006 Mr S completed his IVA receiving a certificate of completion.

In 2014, following Mr S's complaint that he had been mis-sold PPI, Capital One offered him compensation of £3,323.80. And Capital One used the compensation to reduce Mr S's outstanding debt on the credit card account.

Mr S says that he had completed his IVA and received a certificate of completion in 2006. He considers that the conclusion of his IVA meant that the creditors (in this case Capital One) had accepted an amount in 2006 and this was in full and final settlement of the debt. And any balance owed was written off. He also says that his insolvency practitioner doesn't have an interest in the compensation.

So Mr S considers that he has no account or debt with Capital One and it should pay him the compensation directly.

Our adjudicator looked at the complaint and thought that what Capital One had done was fair. Mr S 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 S, so I don't need to look at how it was sold. And Mr S 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 S, so I would like to take this opportunity to explain why.

Mr S considers that as he completed his IVA in 2006 it means he has no account or debt with Capital One. And, as his insolvency practitioner has no interest in the compensation, Capital One should pay him the compensation directly.

When Mr S 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 in 2006.

Mr S entering an IVA and then successfully completing it meant by law he couldn't be chased for the debt. The debt Mr S 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 S for the debt. It has accepted it owes Mr S 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 S 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 S's outstanding debt on his credit card account.

The PPI sold to Mr S 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 S had with Capital One.

And despite Mr S completing his IVA in 2006 and his insolvency practitioner having no interest in the compensation, both parties owed each other money relating to the same account. So it seems fair that one amount should be set against the other.

Capital One has reduced what Mr S owes it and I think it was fair for Capital One to do so.

Mr S has mentioned that other businesses have paid him directly. I can't comment on what other businesses did on Mr S's other complaints or why, I can only look into whether or not what Capital One have done on this complaint is fair. And for the reasons given above, I think it was fair for Capital One to use the compensation to reduce what Mr S owed it.

my final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 September 2017.

Matthew Horner
ombudsman