

complaint

Mr C isn't happy with how Capital One (Europe) plc ('Capital One') has resolved his complaint about a payment protection insurance ('PPI') policy attached to a credit card.

background

Mr C had a PPI policy attached to a credit card that was sold in 2000.

Mr C entered into an involuntary arrangement ('IVA') which completed in 2015.

Mr C complained in 2015 that he had been mis-sold the PPI policy. Capital One agreed and calculated that Mr C was owed £2,066.12 (after tax) in compensation. But Capital One said it was going to use this compensation to clear a debt Mr C still had with it following the completion of his IVA. Once the debt was cleared there was a small amount left over – so Capital One sent Mr C a cheque for £27.53 to settle his complaint.

Mr C's insolvency practitioner ('IP') has told this service that it has an interest in the PPI compensation but at the time of asking they said they believed all of the funds should go to Mr C as that was the legal position at the time.

Our adjudicator looked at the approach Capital One had taken and thought it was fair.

Mr C disagreed and because the complaint has not been resolved it has been passed to me for a final decision.

I issued a provisional decision on 18 May 2018 to explain why I thought the approach Capital One had taken was fair.

I gave both parties until 18 June 2018 to respond with any further comments or submissions. Neither party responded.

my findings

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

Because neither party provided anything further for me to consider I confirm those findings and I'll reiterate them here.

I understand that Mr C will be disappointed but I agree that the approach Capital One has taken in this case is fair. I'll explain why.

When a business agrees to settle a PPI complaint we expect it to, as far as possible, put the customer in the position they would have been in had they not taken out the PPI policy.

With a PPI policy attached to a credit card this normally means a refund of any overpayments that the customer made on the credit card (usually the PPI premiums charged on the credit card and interest charged on those premiums), any fees charged on the credit card because of the PPI, and 8% simple interest, to compensate the customer for the time they've been without this money.

But in this case Mr C had trouble making his repayments on his credit card. And this debt formed part of the IVA he entered into in 2010. Mr C completed his IVA and because he did he says the debt has been 'written off' and so he thinks the PPI compensation should go straight to him. Capital One disagrees and has used the PPI compensation to reduce his outstanding debt on his credit card.

Mr C's IP wrote to this service in 2015 to say that whilst they had an interest in the complaint they felt the offer should go to Mr C as at the time that was the legal position. I'm aware of the court case that the IP has alluded to and in 2015 the legal position around this issue was uncertain. But the position has since been clarified and I don't think it makes a difference in this complaint. This particular court case isn't directly relevant in Mr C's case because that case involved a dispute between a consumer and their IP. Whereas here Mr C and his IP are in dispute with Capital One.

So, when Mr C entered into an IVA, the debts he owed weren't legally cancelled, they were frozen. And they weren't cancelled when the IVA ended. So the debt Mr C has with Capital One does still exist – because it hasn't been paid back. It just means that by law Capital One aren't able to chase him for this debt. So Mr C doesn't have to actively pay this debt back.

But Capital One is still out of pocket for this money. It has accepted that it owes Mr C money for the PPI compensation, so it owes him something too. And it is 'setting off' the PPI compensation against the debt Mr C owed for the spending on his credit card account which still exists and is owed to Capital One.

I've also thought about what the PPI compensation is made up of. Some of it will be money he borrowed for PPI premiums (and interest) that he never paid back. So I don't think it would be fair for him to get a refund of this as it's not something he actually paid for. Overall, I think that in this particular case, Capital One has acted reasonably.

As I've mentioned above Mr C's IP has told this service it has an interest in the complaint. An IP has powers under an IVA to take a matter to court if a business is in breach of the terms of an IVA. The appropriate forum for an issue between the IP and the business is a court and this service is not in the position to interpret and apply the terms of an IVA.

Our service is here to resolve disputes between consumers and financial businesses. The complaint was brought to us by Mr C through his representative and Mr C signed the necessary complaint forms. So I am looking at how the complaint between Mr C and Capital One should be fairly settled.

If the IP is unhappy with what the business has done in relation to a debt that forms part of the IVA then it has an appropriate course of action open to take that matter to court. I am looking simply at what is fair between the parties and the debt Mr C owes to Capital One and the compensation Capital One owes to Mr C.

I'm satisfied that Capital One has correctly upheld the complaint that PPI was mis-sold and worked out the compensation due in the way I would expect. I also think setting off the debt it owes to Mr C for the PPI compensation, against the debt Mr C owes Capital One on the credit card, is fair.

Mr C's representatives have also asked for Capital One to consider whether or not it needs to refund any commission or profit share it obtained on Mr C's PPI policy. But Capital One's offer takes into account everything Mr C was charged for PPI, including anything any commission or profit share. And its offer puts him in the position he'd be in now if he'd never had a PPI policy with his account, which means he would not have been charged any commission or profit share. So I don't need to consider this point further.

my final decision

For the reasons I've discussed above, my final decision is that the approach Capital One (Europe) plc has taken to resolve Mr C's PPI complaint is fair. So I don't direct it to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 2 August 2018.

Martin Purcell
ombudsman