Complaint

Mr T is complaining that Capital One (Europe) plc ("Capital One") mis-sold him a payment protection insurance ("PPI") policy attached to his credit card. It has used the compensation due to him to reduce his outstanding debt with it.

background

Mr T took the policy shortly after he applied for his credit card in 2000. He later thought it had been mis-sold to him and complained to Capital One.

Capital One rejected the complaint and being unhappy with the outcome Mr T brought his complaint to this service for review.

One of adjudicators considered the complaint and didn't think it should be upheld because she was satisfied that Mr T made it clear that he wanted to take the policy. But Capital One later made an offer for the high level of unfair commission and profit it had received on the premium Mr T was charged for the policy. As Mr T wasn't told about the rate at which the commission was charged, it led to an 'unfair relationship'. Capital One had to pay back to Mr T any commission and profit share that it had received that was more than 50% of the premium.

This worked out to be £14.74. This included the excess commission part of the PPI premium itself and the excess associated interest charged because of it. But Capital One has used the compensation to reduce Mr T's outstanding debt on the credit card.

Mr T says he was previously in an individual voluntary arrangement ("IVA") but it had been completed. He said he had a letter from the IVA practitioner to say they no longer had any interest.

Another of our adjudicators looked at this and concluded that Capital One had acted fairly.

Mr T remained unhappy and the complaint remained unresolved. So the case has been passed to me to make a final decision.

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 doesn't agree it mis-sold the PPI policy to Mr T but it has offered to repay the commission that gave rise to the unfair relationship, so I'll look at the mis-sale itself and how Capital One has used the compensation.

was the policy mis-sold to Mr T

I've decided the policy wasn't mis-sold because:

- I think Capital One made it clear that Mr T didn't have to take out the PPI and that he chose to take it out – although I can understand why he can't remember this as the sale was a long time ago. Capital One has given me a copy of Mr T's credit card application form which has been completed by hand. There is a section entitled '*Additional*

Information' which says '*Please enrol me in Capital One's Payment Protection scheme (See leaflet enclosed)'* which is followed by 'yes' or 'no' tick boxes. The 'yes' box has been ticked. Mr T has signed the application form.

- Capital One has said it was a postal application which I think is likely. The form has Mr T's address pre-printed and it refers to enclosures which is compatible with a postal application. I think it's more likely than not that Capital One didn't recommend the PPI to Mr T and he completed it in his own time without any contact with a Capital One representative. So it didn't have to check if it was right for him. But it did have to make sure Mr T got the information he needed to decide if it was right for him.

- It's possible the information Capital One gave Mr T about the PPI wasn't as clear as it should have been. But he chose to take out the PPI – so it looks like he wanted this type of cover. Based on what I've seen of his circumstances at the time it doesn't look like he was affected by any of the exclusions to or limits on the PPI cover – so it would have been useful for him if something went wrong.

  It also looks like the PPI was affordable. So I don't think better information about the PPI would have put him off taking out the cover.

- Which means Capital One doesn't have to pay back all of the cost of the PPI to Mr T.

But Capital One has paid back *some* of the cost of the PPI to Mr T because:

- When the policy was sold, Capital One expected to get a high level of commission and profit share (more than 50% of the PPI premium) – so it should have told Mr T about that. Because Capital One didn't tell Mr T, that was unfair.

- To put that right, Capital One has paid back the amount of commission and profit share that was above 50% of the PPI premium – and I think that is fair in this case.

can Capital One use Mr T's compensation to pay what he owes

But as explained above, Capital One has used the compensation to offset against money it is owed by Mr T. I think Capital One did act fairly. I know Mr T will be disappointed with my decision so I'd like to explain how I've reached the conclusion that I have.

Mr T considers that as the IVA has been completed and that the IVA practitioner didn't have any interest, then the compensation should be paid to him directly.

When Mr T entered into an IVA, the debts he owed weren't legally cancelled or written off. Rather, they were frozen, and this is important to understand. So the debts didn't cease to exist when the IVA was successfully completed.

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

Capital One is still out of pocket for this money - it isn't pursuing Mr T for the debt. But it has accepted it owes Mr T money for the PPI compensation, so it owes him a debt. What it is doing is 'setting off' the PPI compensation against the debt Mr T owed for his spending on the credit card account that 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 T’s outstanding debt on his credit card account.

The PPI sold to Mr T was directly connected to his credit card. By using the right of set-off I have outlined above, I’m satisfied the PPI compensation and the credit card debt are closely connected. They are both for the same account Mr T had with Capital One.

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

I empathise with Mr T’s position. Clearly, he thought he didn’t owe anything after completing the IVA. But unfortunately this isn’t the case. And as I have said above, Capital One can’t legally pursue him for the debt.

Had the IVA practitioner had an interest then Mr T’s compensation would have been paid to the practitioner. And if they didn’t hold an interest then Capital One could have used it to reduce the debt as they have done. Mr T would only receive anything, if there were some left over. Which in Mr T’s case there wasn’t.

my final decision

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

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr T to accept or reject my decision before 5 November 2018.

Catherine Langley
ombudsman