

## **complaint**

Mr H has complained about the way Capital One (Europe) plc ("Capital One") has used the compensation it agreed to pay him following a complaint about the sale of a payment protection insurance ("PPI") policy.

## **background**

Mr H took out a credit card with Capital One and took out a PPI policy alongside it. Mr H was unable to make the minimum payments on his credit card and his account fell into arrears. Mr H continued to make some payments and in January 2007 the remaining debt was around £4,000. Mr H came to an agreement with Capital One in February 2007 to make a payment of £3,000 in 'full and final' settlement. Capital One agreed not to pursue Mr H for the rest of the money and it added a note on his credit file saying there had been 'partial settlement'. After he paid the £3,000 and another payment was made the outstanding balance was reduced to £500.

Mr H complained to Capital One that he'd been mis-sold PPI and it offered to pay him compensation. Capital One worked out that he should get back £488.74, which was what he'd paid for PPI plus interest. Mr H signed an acceptance form in December 2011.

Capital One used part of Mr H's refund to clear the remaining debt and it sent Mr H a cheque for the rest (£164.74). Mr H says he should've got the whole PPI refund paid to him as he'd settled his debt with Capital One in February 2007.

Our adjudicator looked at the complaint and thought what Capital One had done was fair. Mr H disagrees, so the complaint has been passed to me for a final decision.

## **my findings**

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

Capital One made an offer about PPI and Mr H accepted this in full and final settlement of his complaint. Mr H isn't saying that the amount Capital One offered is wrong, so it seems to me that all I've got to decide is whether or not it's fair for Capital One to use the refund to reduce the arrears on Mr H's credit card account.

We usually say a business can use a consumer's refund to reduce their arrears if the PPI policy was sold alongside the account in arrears. In this case the arrears and PPI are linked to the same credit card account. Mr H's argument is that Capital One accepted a partial settlement in 2007, so the credit card account is closed and the arrears have been cancelled.

I think what Capital One has done is fair and I'd like to explain why.

When Mr H accepted the offer from Capital One in 2011 he signed a settlement form which said:

*"Once we receive your form we will offset any refund against any outstanding defaulted balance or over limit amount, within 10 working days. By defaulted*

*balances we mean any balance outstanding after the credit facility has been revoked."*

So Capital One told Mr H what it would do before he accepted its offer.

What's more, when Capital One agreed to accept £3,000 in 2007 it didn't cancel the debt, it just agreed not to ask Mr H to repay what was left. It put a note on his credit file to say that the debt had been partially settled – it didn't say the debt had been fully repaid.

So I think it's fair for Capital One to use part of Mr H's refund to clear his arrears.

Mr H has said that he thought Capital One had sold his debt on, so it couldn't reduce the debt. I've looked at the account history that Capital One has sent us and I'm satisfied that it didn't sell the debt on.

Mr H has also said that the refund should be paid directly to him because he has other important debts he needs to pay. I've seen that he has a charge over his property securing a business loan, but Mr H has told us he's been keeping up his payments on this debt. As he isn't in arrears, I don't think it's fair to tell Capital One to pay him directly.

#### **my final decision**

For the reasons I've set out above I think it's fair for Capital One (Europe) plc to use the compensation to reduce Mr H's debt and to pay him the remainder directly.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr H to accept or reject my decision before 26 May 2015.

Mark Hutchings  
**ombudsman**