

## **complaint**

Mr R complained he was mis-sold payment protection insurance (PPI) with a loan with Capital One (Europe) plc (Capital One).

## **background**

Mr R took out a loan with Capital One in 2005 (first loan), he refinanced this loan with a new loan in 2006 (second loan) and borrowed more money. Mr R took separate single premium PPI policies out on both loans.

Capital One agreed that Mr R had been mis-sold PPI and agreed to make him an offer of £3,178.40 for the PPI mis-sold on both loans.

Capital One used all of the compensation to reduce arrears on Mr R's current loan. Mr R has complained about this and wants the compensation paid directly to him.

Our adjudicator said Mr R should be paid part of the compensation directly to him. Capital One disagreed and the matter has been passed to me for a final decision.

## **my findings**

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

Mr R has not complained that the offer was incorrect but that he wanted the amount paid directly to him. I need to consider whether it was fair for Capital One to use all of the compensation to reduce outstanding arrears on Mr R's second loan. I don't think the approach Capital One followed was fair and I will explain why below.

We expect Capital One to put Mr R back in the position he would have been in if he had taken the loans without the PPI. So we would expect it to calculate the amount that he paid for the PPI and add 8% simple interest to this to compensate Mr R for the time he was out of pocket.

Capital One did this and said that for the first loan the compensation was £669.20 in premiums and interest plus 8 % simple interest of £321.95 making a total of £991.15. For the second loan the compensation was £1,640 in premiums and interest plus 8% simple interest of £546.75 making a total of £2,187.25. This is in line with the approach we would expect Capital One to take.

Capital One applied the total compensation for both loans against the outstanding debt owed by Mr R on his second loan account.

I have considered the facts and I note that Mr R took out a single premium PPI policy in 2005 with a loan, he then refinanced this loan and borrowed more with the second loan in 2006. When he did this the first loan was paid off and the first PPI policy was cancelled. A new PPI policy was then sold along with the second loan. Mr R fell into arrears on the second loan.

I have taken into account Mr R's broader financial circumstances to see if all of the compensation should be paid to him. This may be the case if Mr R had priority debts that were pressing.

I note that Mr R has said he is in a debt but also that his debts are manageable. He is in a plan to pay these and he has no priority debt such as mortgage arrears at present. So I don't think I can direct Capital One to pay all of the compensation to Mr R.

But, I don't think it is fair and reasonable for Capital One to use *all* of the PPI refund against the unpaid and overdue amounts it's owed on the second loan. I agree with our adjudicator that the loans were separate loans and the sale of each policy was a separate event. So I don't think it's fair to include the compensation Capital One owes to Mr R for loan one against the arrears on the second loan. Only the portion of the compensation which relates to the second PPI policy should be paid against the arrears on the second loan. The compensation for the first loan needs to be paid to Mr R directly.

I also considered whether Capital One has caused any trouble and upset to Mr R and whether paying all of the compensation against his loan affected him in other ways. Mr R has said that he has had a lot of other financial debts and I have some sympathy that if the compensation had been partly paid to him, he may have been able to reduce some debt sooner. I can also see that Mr R has been waiting a long time for this to be resolved.

I need to look at both sides of the case and decide what is fair and reasonable and I think that Mr R should receive the amount of £200.00 for the trouble and upset caused as a result of him not directly receiving any compensation earlier and the delays that have occurred.

### **my final decision**

For the reasons I have set out above, I am upholding this decision in part against Capital One (Europe) Plc and I direct Capital One to pay the compensation in respect of loan 1 directly to Mr R and bring that calculation up to date. I also direct Capital One to pay Mr R a further £200 for the way this case was handled.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr R to accept or reject my decision before 4 September 2015.

Miranda Bates  
**ombudsman**