

## **complaint**

Miss M isn't happy with how Capital One (Europe) Plc ('Capital One') resolved her complaint about a payment protection insurance ('PPI') policy attached to her credit card.

Miss M has been represented throughout her complaint.

## **background**

Miss M took out a credit card with Capital One in 2003. Attached to that credit card was a PPI policy.

Miss M, at some point, struggled to make her repayments on the credit card. Miss M entered into a Debt Relief Order ('DRO') in 2010. The debt on her credit card formed part of her DRO.

Miss M later complained that she had been mis-sold a PPI policy in 2017. Capital One agreed and upheld her complaint.

But Capital One said that because Miss M had a debt on her credit card account that it would use her PPI compensation to reduce that debt.

Miss M disagreed with this approach and brought the complaint to this service. Our adjudicator looked at the approach Capital One had taken and thought it was fair.

Still unhappy with the approach, Miss M has asked for an ombudsman to review the complaint. So 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 already agreed to settle Miss M's complaint. So I'm not going to comment on the sale of the policy. I will just be looking at whether the approach Capital One has taken to settle Miss M's complaint is fair.

When a business agrees to settle a complaint we expect it to, as far as possible, put the consumer back in the position they would've been in had they not taken out the policy.

With PPI attached to a credit card, this typically means a refund of all the overpayments made on the credit card because of the PPI – including the card interest caused by the PPI – and 8% simple interest, to compensate the consumer for the time they've been without this money.

Capital One looked at the effect PPI had on Miss M's credit card and calculated that it would have offered her £260.11 (after tax).

But because Capital One said there were still arrears on the credit card account, which hadn't been paid back, it would use Miss M's PPI compensation to reduce those arrears.

Miss M doesn't think this is fair. She says this debt formed part of a DRO she entered into in 2010 and that DRO has since finished. Because it's finished Miss M thinks that her debts no longer exist – so she doesn't think Capital One should be able to keep her compensation.

I've listened to everything Miss M, her representative and Capital One has said. I understand that Miss M will be disappointed but I agree that the approach Capital One has taken is fair. I'll explain why.

When Miss M entered into a DRO, the debts she owed weren't legally cancelled, they were frozen. And they weren't cancelled when the DRO ended. So the debt Miss M has with Capital One does still exist – because it hasn't been paid back. It just means that by law Capital One has agreed not to chase her for this debt. So Miss M 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 Miss M money for the PPI compensation, so it owes her a debt too. And it is 'setting off' that debt for the PPI compensation against the debt Miss M owed for the spending on her credit card account which still exists and is owed to Capital One.

There is in law what is called the *equitable right of set-off* which allows people to 'set off' closely connected debts. This means that 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 Miss M's outstanding debt on her credit card account.

The PPI sold to Miss M was directly connected to her 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 related to the same account Miss M had with Capital One.

As I've mentioned, both these debts related to the same account and I've also seen nothing to show Miss M has priority debts so she needs the compensation to pay those. So, again I think it's fair for Capital One to use the compensation it owes Miss M to reduce her credit card account debt.

Miss M's representative has made reference to the Insolvency Act 1986, in particular section 251 which deals with what happens when a person is discharged from their debts. The representative believes this section suggests that when a DRO ends the consumer is discharged from liability *and* the debt ceases to exist.

The section Miss M's representative has referred to does suggest that Miss M doesn't have to pay anything more towards the debt at the end of the DRO. And that's true – as I've mentioned Capital One can't pursue her legally for the debt, nor does she have to actively pay anything towards it or face any future charges because of it. But that's not what is happening here – as I've explained above.

Miss M did make a comment that she had a successful PPI claim with another company and that business paid her directly despite also having a debt subject to the DRO. I don't know why the other company did this or the circumstances around that particular account or PPI policy. It's up to the business whether it does this or not and in that case maybe it was generous of it to pay her the compensation. But I don't think it's relevant in this case and it doesn't make the approach Capital One has taken unfair.

I've also considered Miss M's representatives concerns about Capital One's complaint handling. I've looked at what happened and agree that it could've been better. But I don't think any significant delays were caused to Miss M getting her answer. Nor have I seen anything to make me think Miss M was put to any greater inconvenience than normal when making a complaint. So I don't think Capital One need to think about any extra compensation here.

### **my final decision**

As mentioned above, my final decision is that the approach Capital One (Europe) Plc has taken to resolve Miss M's PPI complaint is fair – so I won't be asking it to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 22 December 2017.

Martin Purcell  
**ombudsman**