

## **complaint**

Miss E is complaining that Capital One (Europe) plc has used the compensation it offered for the mis-selling of a payment protection insurance (PPI) policy attached to her credit card, to reduce her outstanding debt.

## **background**

In 2017, following Miss E's complaint through a claims management company (CMC) that she had been mis-sold PPI, Capital One offered her compensation of £666.52 (after tax). And Capital One used the compensation to reduce Miss E's outstanding debt on the credit card account.

Miss E says that she had previously been in an individual voluntary arrangement (IVA). But she had completed her IVA receiving a certificate of completion in 2010.

She considers that the conclusion of her IVA meant that the creditors (in this case Capital One) had accepted an amount and this was in full and final settlement of the debt.

She also says that her insolvency practitioner (IP) doesn't have an interest in the compensation. And she has had another business pay her PPI compensation directly – and this was because the IP didn't have an interest. And this case had been with our service so she doesn't understand why this should be any different.

Because of this, Miss E considers that the compensation should be paid to her directly.

Our adjudicator looked at the complaint and thought that what Capital One had done was fair.

Miss E remained unhappy and asked for an ombudsman to review the case and make a final decision. Because this matter hasn't been resolved, 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 agreed it mis-sold the PPI policy to Miss E, so I don't need to look at how it was sold. And Miss E hasn't complained about the amount Capital One has offered in compensation, so I haven't looked at this.

In this decision, I've only looked at whether it was fair for Capital One to use the compensation it's offered to reduce her outstanding debt.

Having done so, I think Capital One has acted fairly. I know this will come as a disappointment to Miss E, so I would like to take this opportunity to explain why.

Miss E considers that as she completed her IVA and because her IP didn't have an interest in her compensation she should receive the compensation directly.

When Miss E entered into an IVA, the debts she owed weren't legally cancelled or written off, they were frozen. This is important to understand. The debts didn't cease to exist when the IVA was successfully completed.

Miss E entering an IVA and then successfully completing it, meant by law, she couldn't be chased for the debt. The debt Miss E has with Capital One does still exist – because it hasn't been paid back.

Capital One is still out of pocket for this money. And it isn't pursuing Miss E for the debt. It has accepted it owes Miss E money for the PPI compensation, so it owes her a debt. And it is 'setting off' this debt for the PPI compensation against the debt Miss E owed for her spending on the credit card account which 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 Miss E's outstanding debt on her credit card account.

The PPI sold to Miss E 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 for the same account Miss E had with Capital One.

And despite Miss E completing her IVA, both parties owed each other money relating to the same account. So it seems fair that one amount should be set against the other.

I appreciate that Miss E's IP explained they don't have an interest in the compensation. But for the reasons explained I think it was fair for Capital One to use the compensation to reduce what Miss E owed it.

I empathise with Miss E's position, because I can understand why she thought she didn't owe anything after completing her IVA and because of what her IP said. But unfortunately this wasn't the case.

Had the IP had an interest then Miss E's compensation would've been paid to the IP. And if they didn't hold an interest, then Capital One could've used it to reduce the debt as they have done. Miss E would only receive anything, if there was some left over. Which in Miss E's case there wasn't.

I note that Miss E has said that she had another case with our service, and in that case the business paid her compensation directly. I can appreciate this would be frustrating for Miss E, having had one business pay her directly while another doesn't.

I have looked at Miss E's other case. And I would like to explain in that case, the business after finding out that Miss E had completed her IVA, *chose* to pay Miss E the compensation. But importantly, it didn't have to. It would've been entitled to reduce what Miss E owed it – for the reasons I've explained above.

We did not make a finding that the business should pay her directly. I hope this helps clear up any confusion Miss E had about this.

**my final decision**

For the reasons set out above, I don't uphold Miss E's complaint. I think it was fair for Capital One (Europe) Plc to use the compensation it owed Miss E to reduce her outstanding debt.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 11 December 2017.

Matthew Horner  
**ombudsman**