

complaint

Mrs P isn't happy with how Capital One (Europe) plc ('Capital One') has offered to resolve a complaint about a payment protection insurance ('PPI') policy attached to a credit card.

background

Mrs P took out a credit card in 2005. At the same time a PPI policy was sold connected to that credit card.

At some point, Mrs P had trouble making repayments on the card. She eventually entered into an involuntary arrangement ('IVA') in 2010 and this debt formed part of that IVA.

Mrs P's IVA completed in 2014.

Mrs P later complained to Capital One that her PPI policy had been mis-sold. Capital One initially rejected her complaint but later upheld it and calculated her compensation to be £2,251.54 (after tax).

But, Capital One said that Mrs P still had a debt on her credit card account – which was not wholly cleared by the IVA. And the amount of compensation it says it owed her for the PPI complaint was less than the debt left on the account. So it used the PPI compensation to reduce her outstanding debt balance – this meant Mrs P did not directly receive any compensation.

Mrs P wasn't happy with this. Our adjudicator looked at the approach Capital One had taken and thought it was fair. Mrs P disagreed and asked for an ombudsman to review the complaint.

Because the complaint has not been resolved, it has been passed to me for 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.

I understand that Mrs P will be disappointed but I agree that the approach Capital One has taken in this case is fair. I'll explain why.

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

With a PPI policy attached to a credit card this normally means a refund of any overpayments that the customer made on the credit card (usually the PPI premiums charged on the credit card and interest charged on those premiums), any fees charged on the credit card because of the PPI, and 8% simple interest, to compensate the customer for the time they've been without this money.

But in this case Mrs P had trouble making her repayments on her credit card. And this debt formed part of the IVA she entered into in 2010. Mrs P completed her IVA and because she did she says the debt has been 'written off' and so she thinks the PPI compensation should go straight to her. Capital One disagrees and has used the PPI compensation to reduce her outstanding debt on her credit card.

When Mrs P entered into an IVA, the debts she owed weren't legally cancelled, they were frozen. And they weren't cancelled when the IVA ended. So the debt Mrs P 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 Mrs P doesn't have to actively pay this debt back – and Capital One has confirmed this in its submissions to this service.

But Capital One is still out of pocket for this money. It has accepted that it owes Mrs P 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 Mrs P 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 Mrs P's outstanding debt on her credit card account.

The PPI sold to Mrs P 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 Mrs P had with Capital One.

As I've mentioned, both these debts related to the same account and I've also seen nothing to show Mrs P has other pressing issues or priority debts which might mean she'd need the compensation to pay those – for example, any legal proceedings taken against her home. So, again I think it's fair for Capital One to use the compensation it owes Mrs P to reduce her credit card account debt.

Capital One has also provided a copy of its calculation of Mrs P's offer. It is also worth mentioning that a lot of the PPI and interest on that PPI she was charged formed part of the debt that formed part of her IVA. And, even if I were to tell Capital One to pay Mrs P the compensation directly, it wouldn't be fair for her to get a large chunk of it – because she's never been out of pocket for this money. She did pay some money towards PPI when she was using the credit card but most of the costs of the PPI formed part of her overall debt. If Mrs P did not have PPI on her account it would have just meant that her debt would've been lower.

Mrs P's other concerns

Mrs P has raised some other concerns that form part of her complaint.

Mrs P was unhappy that Capital One, initially, wouldn't tell her the reason it upheld her complaint. Capital One has said that it upheld Mrs P's complaint after she sent in some further information about her circumstances at the time of the sale of the PPI. For the purposes of Mrs P's complaint, I've not looked into how or why a PPI policy was sold to her, because Capital One has already agreed to settle her complaint. I am just looking at whether or not the offer Capital One has made to resolve her complaint is fair.

Mrs P is also unhappy because her husband had a complaint with Capital One and it paid him his compensation directly – despite the fact he was party to the IVA. Capital One looked into this and is not sure why the compensation was paid to Mrs P's husband. It acknowledges that this was likely a mistake.

I don't know why Capital One did this and there could be a number of reasons as to why. But, whilst I appreciate Mrs P's frustration with this, I don't think it's relevant to her complaint. Ultimately I have to look at what Capital One is doing with Mrs P's complaint and whether that is fair. And I think it is.

Mrs P has said that there is a conflict between the amount Capital One says she owed on the account and what her insolvency practitioner ('IP') said she owed towards her Capital One debt. I've seen a copy of an email from her IP which says how much it thinks she owes. I've also seen Capital One's internal records from her account.

Capital One's records show that Mrs P's credit card account defaulted in 2010 with a balance of £6,749.53. Then it seems a series of small payments were made towards the debt until Capital One received a 'final payment' from Mrs P's IP of £951.35 which reduced the outstanding debt balance to £3,766.77. This was the balance as of the end of Mrs P's IVA and this was the amount that was 'written off'. Capital One then used Mrs P's PPI compensation – which totalled £2,251.54 – to reduce more of her debt. This left a balance of £1,515.23 on her credit card account which remains 'written off'.

Mrs P has sent us a copy of an email from her and her husband's IP. This states that Capital One had a claim in the IVA for £2,139.06 and they received a payment of £936.28 from the IVA – leaving a 'written off' balance of £1,202.78. I don't know why the amounts from Capital One and the IP's records are different. The email from the IP is addressed to both Mrs P and her husband. But the credit card debt from Capital One is in Mrs P's own name.

I think the evidence Capital One has sent in is sufficient enough to show that Mrs P has this debt on her credit card account. So I think these are likely to be the more accurate figures.

I understand Mrs P will be disappointed with the outcome, and that she doesn't agree with the approach the business has taken. I want to assure her that I've considered everything she's told us. I don't want Mrs P to mistake me not agreeing with her as being biased towards the business – or just going along with what Capital One say. We are an impartial service and my job is to come to a fair and reasonable outcome based on the evidence I have and whilst taking account of the relevant laws, rules and good industry practice.

my final decision

For the reasons I've set out above, my final decision is that the approach Capital One (Europe) plc has taken to resolve Mrs P's complaint is fair. So I won't be asking it to do anything else.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 15 March 2018.

Martin Purcell
ombudsman