

complaint

Ms I is unhappy with how Capital One (Europe) Plc (Capital One) has used the compensation it offered to settle her complaint about a mis-sold payment protection insurance (PPI) policy related to a credit card.

background

Ms I took out a credit card with Capital One in 2005 and also took out PPI alongside it to protect her repayments.

Ms I complained to Capital One that she'd been mis-sold the PPI. Capital One eventually agreed to uphold her complaint the PPI was mis-sold and made an offer of compensation to settle the complaint. But Capital One said Ms I still owed a debt on the credit card that had been unpaid. So it was using the compensation to reduce the amount of money that was still owed on the card account debt.

Ms I says that she should get paid this PPI compensation directly. Capital One didn't agree and Ms I brought her complaint to this service.

One of our adjudicators looked at the complaint and thought it was fair for Capital One to use the compensation to reduce the debt that hadn't been cleared on the credit card account.

Ms I didn't agree and asked for the complaint to be considered by an ombudsman.

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 to uphold the complaint and worked out compensation for the mis-sale. So in this decision I am not looking at how PPI came to be sold to Ms I. But I do need to consider whether Capital One's compensation offer and how it has used the compensation is fair.

When a business has mis-sold PPI, it must put things right by putting the consumer as far as possible in the position they would've been in if they hadn't taken out PPI. So I'd expect a business to remove from the credit card account the charges for PPI, any interest paid on the charges and any further charges caused by the PPI.

If, when the costs of the PPI are taken off the credit card balance, someone paid more than they needed to clear their balance I'd expect a business to pay interest on the extra amount for the time they are out of pocket at the rate of 8% a year simple interest.

Capital One has worked out that, if Ms I didn't owe anything for the debt on her credit card, she'd get back £1,424.84 in compensation. This is made up of £711.07 for the PPI premiums that were added to the account and £713.77 in interest caused by those premiums being on the account.

Ms I defaulted on payments to her credit card balance in 2010 and whilst the account was active she never cleared the balance on the account. So the costs of the PPI in the balance

of the account were never repaid and she wasn't out of pocket for any of these costs. So there is no compensatory interest to include.

Capital One set out what it was offering in a letter in March 2019 and also said that as Ms I still owed a debt on the credit card account it was going to use this compensation to set off against that debt.

Ms I hasn't said she feels the compensation amount offered is wrong. And having looked at the calculations and card data and statements provided, I also think what Capital One has worked out is fair. So, I now need to consider whether Capital One can fairly use the compensation to reduce the debt it says Ms I still owes.

We usually say a business can use a consumer's compensation to reduce their debts if the debt is on the account that PPI was sold alongside. This is what is called a closely associated debt. Here I can see that the PPI was associated with the same credit card account that went into arrears and on which the debt exists. So I think Capital One can use the compensation to reduce the debt.

I would also add that the PPI premiums were borrowed by Ms I as they were charged to her credit card. And as I have said she never cleared the balance of the account. So these premiums, and the interest they caused whilst part of the balance, were never actually paid by Ms I. By setting the compensation against the outstanding debt Capital One is in effect removing the costs of the PPI from the debt Ms I owed, so that debt is reduced to the amount she owed for just her own spending on the account. And that amount for her spending, after removal of the PPI costs, leaves a debt still owed of £4,029.37.

Ms I says if she had never had the PPI she would never have had the debt on her credit card. She indicates she took out the PPI thinking it would cover her payments if she became ill and when she tried to claim she was told she didn't qualify so the outstanding amounts on the credit card were not paid by the insurance. So although she has complained the PPI was mis-sold, and that complaint has been upheld, she also feels the insurance should have paid out a claim.

Ms I has been told already that if she wanted to make a backdated claim against the policy she could take that to the insurer, that is not Capital One. But the outcome of any such action is uncertain, especially when it has been agreed the PPI was mis-sold.

I have tried to find out when Ms I may have tried to make a claim but she has been unable to provide any information about this. She can only say that she asked Capital One about making a claim and was told she couldn't. If she had made a claim this would have had to be referred to the insurer who provided the policy.

Capital One has provided all its records, including account notes, and there is nothing to indicate when any enquiry about a claim was made. These records do indicate that in 2010 Capital One was advised Ms I was in hospital. I note that it was around this time that Ms I stopped making payments and defaulted on the account. Her last payment was made in December 2009. From May 2010 no further interest was charged to the account balance and it seems the account was frozen.

However the PPI on this credit card account had been cancelled by Ms I in January 2007. A copy of a letter from her dated 22 January 2007 has been provided by Capital One and this letter requests the PPI is cancelled with immediate effect. The last charge for PPI on the

account is shown on the statements as January 2007. Once the policy was cancelled then clearly it would not cover any claims made. And there is nothing to indicate why Ms I wrote to cancel the policy or that she tried to claim at this time in 2007.

I have looked closely at the statements for the account and can see that Ms I basically paid the required monthly repayment payments on the account until September 2009. It would appear after this she may have got into financial difficulties and the last payment was made by her to the account was in December 2009.

Looking at all the facts and history on the PPI on the account I cannot see that it was the costs of the PPI that caused Ms I to fall into debt. The PPI did remain a part of the balance and interest on the PPI cost continued to accumulate until the interest charge was suspended in 2010. But the full PPI costs, including the interest caused, did not form the majority of the balance Ms I owed and defaulted on.

I have also noted Ms I's comments about an arrangement she says she made with Capital One not to set off the PPI costs. She says this arrangement was made when she tried to make her claim on the policy. I have seen nothing to show that any arrangement was ever made with Ms I about not setting off the PPI compensation against the debt on the card.

There is some correspondence in 2015 about Ms I providing medical records to have a special status applied to the account. At this time Ms I had already defaulted on the account and it is possible she was still being chased for payments. If special status was applied that would have meant no further demands for payment for the debt would have been made.

It is unclear from the information I have been provided with if that special status was ever applied to the account, although it does seem that Capital One has not chased Ms I to pay the debt on the account since 2015. Nothing was ever paid to the debt that existed when she defaulted on her payments in 2009. But such special status, if it was applied, does not affect what Capital One is doing now with the compensation.

Capital One hasn't now chased or demanded payment of the credit card debt from Ms I. Ms I complained she had been sold the PPI and Capital One has investigated that complaint and upheld it. Following Capital One agreeing that the PPI was mis-sold it worked out appropriate compensation for that mis-sale. And then Capital One has used the compensation due to set against the debt on the credit card. And as I said earlier this is effectively removing the PPI costs from that debt that Ms I never paid.

As Ms I never paid the costs for the PPI it wouldn't be fair that she is paid the compensation directly. And I cannot see from the total debt owed by Ms I that the PPI, which was only active until 2007, was the main cause of the debt amount she owed.

Taking all these factors and the evidence I have seen into account, I am satisfied that what Capital One has done with the compensation in the circumstances of this particular case is fair.

my final decision

For the reasons set out above, I think Capital One (Europe) Plc's offer and what it has done with the compensation for the PPI mis-sold to Miss I is fair. So I'm not upholding this complaint and I don't direct Capital One (Europe) Plc to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms I to accept or reject my decision before 16 July 2020.

Christine Fraser
ombudsman